



भारत का राजपत्र

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NEW DELHI, SATURDAY, JUNE 27, 1998/ASADHA 6, 1920

इस भाग में भिन्न पृष्ठ संख्या थी जारी है जिससे कि यह प्रत्येक संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सार्विधिक आदेश और अधिसूचनाएं

Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वाणिज्य मंत्रालय
(विदेश व्यापार महानिवेशालय का कार्यालय
नई दिल्ली, 5 जून, 1998)

का.आ. 1255—मैर्सेस टाटा इंजीनियरिंग एंड लोको-
मोटिव लि., नई दिल्ली को ई पी सी जी स्कीम के तहत पंजीयन
मामान के आयात हेतु दिनांक 9-4-97 को दो सौ पेसठ
करोड़, छियालीम लाख, सताइम हजार दस रुपये के
न्हीं एक आयात लाइसेंस संख्या 01500609/1/13/10/
1/01 जारी किया था।

2. फर्म ने इस आधार पर उपर्युक्त लाइसेंस की
विनियम नियंत्रण प्रयोजन प्रति की डुप्लिकेट प्रति जारी
करते हेतु आने वाले किया है कि लाइसेंस की विनियम नियंत्रण
प्रयोजन प्रति ग्रम हो गई है अथवा अस्थानस्थ हो गई है।
याने यह भी कहा गया है कि लाइसेंस की विनियम
नियंत्रण प्रयोजन प्रति को सीमाण्णक सदन के पास
पंजीकृत नहीं किया गया था और एक सौ अठारह बर्ष
पचास लाख रु० तक की गणित का उपयोग करतिया गया।
है तथा एक सौ छियालीम करोड़, छियानवे लाख, सताइम
हजार दस रु. की बकाया राशि भी उपयोग में नहीं
लाया जा सका है।

3. आपत्ति कथन के समर्थन में लाइसेंसधारक ने नोटरी
पत्रिलक, मुम्बई के समक्ष ग्रापथ लेकर स्टैम्प पेपर पर एक
ग्रापथ पत्र दाखिल किया है। एन्ट्रेन्सार, में मन्तुप्त है कि फर्म
के आयात लाइसेंस संख्या 01500609 दिनांक 9-4-97
का विनियम नियंत्रण प्रयोजन प्रति ग्रम हो गई है। अथवा
अस्थ.न.य हो गई है यथा भशाधिन आयात (नियंत्रण) आदेश
1955, दिनांक 7-12-1955 की उपधारा (9 सौ सी)
के तहत प्रदत्त ग्रापथों का प्रयोग करते हुए मैसर्स टाटा
इंजीनियरिंग एंड लोको-मोटिव लि. को जारी उक्त मूल

विनियम नियंत्रण प्रयोजन प्रति संख्या 01500609, दिनांक
9-4-97 को निरस्त किया जाता है।

4. उक्त लाइसेंस की डुप्लिकेट विनियम नियंत्रण
प्रयोजन प्रति पार्टी को अन्वग में जारी की जा रही है।

[फाइल संख्या 01/36/022/91/ए.पा.स 97/ई पीसीजी-3/93]
के चन्द्रामती, उपमहानिदिशक विदेश व्यापार

MINISTRY OF COMMERCE
(OFFICE OF DIRECTORATE GENERAL OF
FOREIGN TRADE)

New Delhi, the 5th June, 1998

S.O. 1255.—M/s. Tata Engineering and Locomotive Company Ltd., New Delhi were granted an Import Licence No. 01500609/1/13/10/101, dated 9-4-1997 for Rs. 265,46,27,010 (Two Hundred Sixty Five Crores, Forty Six Lakhs, Twenty Seven Thousand and Ten only), for import of capital goods under EPCG Scheme.

2. The firm has applied for issue of duplicate copy of Exchange Control Purpose of the above mentioned licence on the ground that the Original Exchange Control Purpose copy of the licence has been lost or misplaced. It has further been stated that the Exchange Control purpose copy of the licence was registered with New Customs House, Mumbai and has been utilised for a sum of Rs. 118,50,00,000/- leaving an unutilised balance of Rs. 146,96,27,010/-.

3. In support of their contention, the licensee has filed an Affidavit on stamped paper duly sworn in before Notary public, Mumbai. I am accordingly satisfied that the Exchange Control Purpose copy of import licence No. 01500609/1/13/10/101, dated

9-4-97 has been lost or misplaced by the firm. In exercise of the powers conferred under Sub-clause 9(cc) of Import (Control) Order 1955 dated 7-12-55 as amended, the said Original Exchange Control Purpose copy No. 01500609/1/13/10/1/01, dated 9-4-1997 issued to M/s. Tata Engineering and Locomotive Co. Ltd. is hereby cancelled.

4. The duplicate Exchange Control Purpose copy of the said licence is being issued to the party separately.

[F. No. 01/36/022/91/AM'97/EPCG-III/93]

K. CHANDRAMATHI, Dy. Director General of Foreign Trade

शहरी कार्य श्रीराजगार मंत्रालय

(शहरी विकास विभाग)

(दिल्ली प्रभाग)

नई दिल्ली, 4 जून, 1998

का.आ. 1256.—यतः निम्नांकित क्षेत्रों के बारे में कुछ संशोधन, जिन्हें केन्द्रीय सरकार अप्रोवर्णित क्षेत्रों के बारे में दिल्ली बृहद योजना/क्षेत्रीय विकास योजना में प्रस्तावित करती है तथा जो दिल्ली विकास अधिनियम, 1956 (1957 का 61) की धारा 44 के प्रावधारों के अनुसार दिनांक 23-8-97 के नोटिस संख्या एफ-20 (20)/93-एम.पी. द्वारा प्रकाशित किये गये थे जिसमें उक्त अधिनियम की धारा 11-ए की उपधारा (3) में अधिक्षित आपत्तियों/सुझाव, उक्त नोटिस की तारीख के 30 दिन की अवधि में आमंत्रित किये गये थे।

श्रीराजगार मंत्रालयों के बारे में एक आपत्ति/सुझाव प्राप्त हुआ है और यतः केन्द्र सरकार ने मामले के सभी पक्षों पर ध्यानपूर्वक विचार करने के पश्चात् बृहद योजना में संशोधन करने का निर्णय लिया है।

यतः यत्र, केन्द्रीय सरकार उक्त अधिनियम की धारा 11-ए की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करने हुए भारत के राजपत्र में इस अधिसूचना के प्रकाशन की तारीख में दिल्ली की उक्त बृहद योजना में एतद्वारा निम्नलिखित संशोधन करती है।

संशोधन : योजना जोन "ओ" (यमुना नदी) में आने वाला लग्नम् 4.00 हेक्टेएर (10 एकड़) क्षेत्र, जो उत्तर में सड़क (पॉटल पुल की ओर जाने वाली), पूर्व तथा दक्षिण में यमुना नदी तल तथा पर्श्चम में उच्चबोल्टता (हाई ट्रैक्स) लाईन से घिरा है, का भूउपयोग "कुषित तथा जल निकाय" से बदलकर "सार्वजनिक तथा अधिक सार्वजनिक सुविधायें" (शमशान) करने का प्रस्ताव है।

[सं. के.-13011/19/94-डी डी आई बी]

के.के. गुप्ता, अवर सचिव

MINISTRY OF URBAN AFFAIRS AND EMPLOYMENT

(Department of Urban Development)
(Delhi Division)

New Delhi, the 4th June, 1998

S.O. 1256.—Whereas certain modifications which the Central Government proposed to make in the Master Plan for Delhi/Zonal Development Plan regarding the area mentioned hereunder were published with notice No. F. 20(20)/93-M.P. dated 23-8-97 in accordance with the provisions of Section 44 of the Delhi Development Act, 1956 (61 of 1957) inviting objections/suggestions, as required

by sub-section (3) of Section 11-A of the said Act within thirty days from the date of the said notice,

2. Whereas one objection/suggestion was received with regard to the proposed modification and whereas the Central Government have, after carefully considering all aspects of the matter, decided to modify the Master Plan.

3. NOW, THEREFORE, in exercise of the powers conferred by sub-section (2) of Section 11-A of the said Act, the Central Government hereby makes the following modification in the said Master Plan for Delhi with effect from the date of Publication of this Notification in the Gazette of India.

MODIFICATION

"The land use of an area measuring about 4.00 ha. (10 acres) falling in Planning Zone 'O' (River Yamuna) bounded by Road (Leading to Pontoon Bridge) in the North, River Yamuna Bed in the East and South and High Tension Line in the West, is proposed to be changed from 'agricultural and water body' to 'public & semi-public facilities' (Cremation Ground)."

[No. K-13011/19/94-DDIB]

K. K. GUPTA, Under Secy.

जल-भूतल परिवहन मंत्रालय

(नौवहन पक्ष)

नई दिल्ली, 11 जून, 1998

का.आ. 1257.—केन्द्रीय दीपभर मंत्रालय मर्मानि (प्रशिक्षियान्सक) नियमावली, 1976 के नियम 3, 4 और 11 के साथ पठित दीपभर अधिनियम, 1927 (1927 का सं. 17) की धारा 4 की उपधारा (1) के अनुसरण में केन्द्र सरकार एतद्वारा भारत सरकार, 'जल-भूतल परिवहन मंत्रालय (नौवहन पक्ष)' की दिनांक 14 मई, 1997 की अधिसूचना सं. एल एच-11016 2 96-एम एल में निम्नलिखित संशोधन करती है:—

उक्त अधिसूचना में क्रम संख्या 5 के सामने निम्नलिखित प्रविधियां प्रतिस्थापित की जायेंगी, अर्थात्:—

"5. श्री देवजीभाई जे. तंडेल, मंसक मंत्री (जोक सभा)"

[फा.सं. एल. एच-11016/2/96-एस एल]

आर.के. शर्मा, अवर सचिव

MINISTRY OF SURFACE TRANSPORT

(Shipping Wing)

New Delhi, the 11th June, 1998

S.O. 1257.—In pursuance of sub-section (i) of Section 4 of the Light-house Act, 1927 (No. 17 of 1927) read with rules 3, 4 and 11 of the Central Advisory Committee for Lighthouses (Procedural) Rules, 1976, the Central Government hereby makes the following amendments in the Government of India, Ministry of Surface Transport (Shipping Wings') notification No. LH-11016/2/96-SL, dated 14th May, 1997 :—

In the said notification, against serial No. 5, the following entries shall be substituted, namely

"5. Shri Devjibhai J. Tandel,
Member of Parliament
(Lok Sabha)"

[F. No. LH-11016/2/96-SL]

R. K. SHARMA, Under Secy.

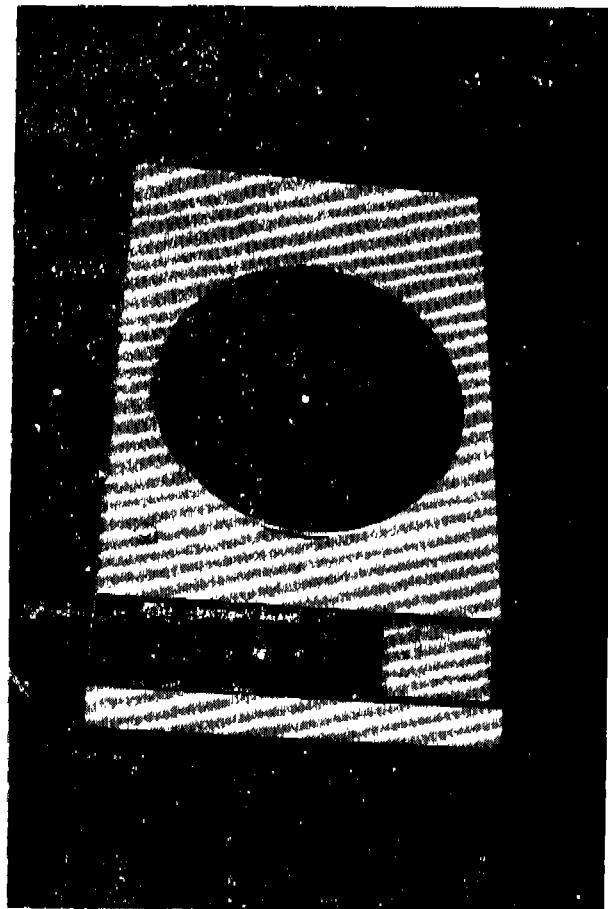
राष्ट्र और उपभोक्ता मामले मंत्रालय

(उपभोक्ता मामले विभाग)

नई दिल्ली, 18 जून, 1998

का. आ. 1258.—केन्द्रीय सरकार का विहित प्राधिकारी द्वारा उसे प्रस्तुत कि गई रिपोर्ट (नीचे आकृति देखिए) पर विचार करने के पश्चात् समाधान हो गया है कि उक्त रिपोर्ट में वर्णित माडल बाट और माप मानक अधिनियम, 1976 (1976 का 60) और बाट और माप मानक (माडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि अविरत उपयोग की अवधि में यथार्थता बनाए रखेगा और परिवर्तित दशाओं में उपयुक्त सेवा देता रहेगा;

अतः केन्द्रीय सरकार उक्त अधिनियम की धारा 36 की उपधारा (7) और (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, एफ ०एक्स० सिरीज की अंकीय संप्रदर्श बाली इलेक्ट्रॉनिक मशीन के माडल का (जिसे इसमें इसके पश्चात् माडल कहा गया है) जिसका विनिर्दिष्ट मैसर्स ए एण्ड डी इन्स्ट्रूमेन्ट्स लिमिटेड, अबिंगडन साईंस पर्क, अबिंगडन, आक्सफोर्ड ओ एक्स 143 वाई एस यूनाइटेड किंगडम द्वारा किया गया है और भारत में इसका विपणन मैसर्स इलेक्ट्रॉनिक सिस्टम, 84 विवेकानन्द पुरी निकट सराय रोहिल्ला पुलिस स्टेशन, दिल्ली-110007 द्वारा किया जाता है तथा जिसे अनुमोदन विहन आई०एन०डी०/१३/१५/७२ समनुदेशित किया गया है अनुमोदन प्रमाणपत्र प्रकाशित करती है।



आकृति

माडल (आकृति देखिए) एक एफ एक्स सिरीज का अंकीय संप्रदर्श वाला इलेक्ट्रॉनिक तोलन उपकरण है। मशीन का तकनीकी व्यौग निम्नलिखित है—

विनिर्माता	:	मैसर्स ए प्रॉड्यूसिंस लिमिटेड, आविंगडन साईंस गार्क, अविंगडन, आक्सफोर्ड ओ एक्स 143 वाई एस यूनाइटेड किंगडम।
उपकरण का नाम	:	अंकीय संप्रदर्श कर इलेक्ट्रॉनिक तोलन उपकरण
टाइप	:	एफ एक्स सिरीज
अधिकतम क्षमता	:	310 ग्राम
सत्यापन भाष्मान	:	
अन्तर (ई)	:	0.01 ग्राम
यथार्थता वर्ग	:	2
संप्रदर्श यूनिट	:	निर्धारित फ्लोरिसेन्ट सूचक
विद्युत प्रदाय	:	230 वोल्ट 50 हर्टज ए०सी०
ताप परिसर	:	+5सी से 40 सी
भार ग्राही	:	105 मिलीमीटर ब्यास

आगे केन्द्रीय सरकार उक्त धारा की उपधारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, और नीदरलैण्ड मीटिंस्टीयूट (एन एम आई) नीदरलैण्ड द्वारा जारी प्रमाण पत्र के आधार पर यह घोषणा करती है कि माडल के अनुमोदन के इस प्रमाण पत्र के अन्तर्गत उसी विनिर्माता द्वारा उसी सिद्धान्त के अनुसार और उसी सामग्री से, जिससे अनुमोदित माडल का विनिर्माण किया विनियमित नीचे दी गई अधिकतम क्षमता वाले समरूप मेक, यथार्थता और उसी सिरीज के कार्यकरण वाले तोलन उपकरण भी हैं।

से०	अधिकतम क्षमता	(ई मान)
एफ एक्स-40	41 ग्राम	0.001 ग्राम
एफ एक्स-200	210 ग्राम	0.01 ग्राम
एफ एक्स-400	410 ग्राम	0.01 ग्राम
एफ एक्स-1200	1200 ग्राम	0.1 ग्राम
एफ एक्स-2000	2100 ग्राम	0.1 ग्राम
एफ एक्स-3000	3100 ग्राम	0.1 ग्राम
एफ एक्स-4000	4100 ग्राम	0.1 ग्राम
एफ एक्स-6000	6100 ग्राम	1.0 ग्राम
एफ एक्स-320	310 ग्राम	0.01 ग्राम
[(ड्यूल रेज)]	60 ग्राम	0.001 ग्राम
एफ एक्स-3200	3100 ग्राम	0.1 ग्राम
[(ड्यूल रेज)]	600 ग्राम	0.01 ग्राम

[फा० सं० डब्ल्यू० एम० 21 (53)/95]

राजीव श्रीवास्तव, अपर सचिव

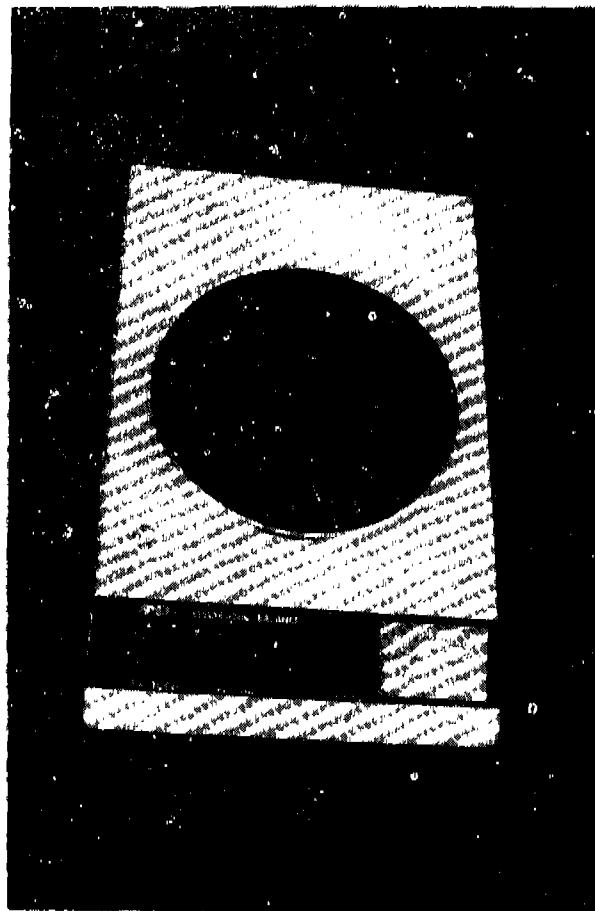
MINISTRY OF FOOD AND CONSUMER AFFAIRS

(Department of Consumer Affairs)

New Delhi, the 18th June, 1998

S.O. 1258—Whereas the Central Government after considering the report submitted to it by the prescribed authority, is satisfied that the Model described in the said report (see figure) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said model is likely to maintain accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-section (7) and (8) of section 36 of the said Act, the Central Government hereby publishes the certificate of approval of the Model of Electronic Weighing machine with digital display of FX series (hereinafter referred to as the Model) manufactured by M/s A & D Instruments Ltd. Abingdon Science Park, Abingdon, Oxford OX14 3 ys, United Kingdom, and marketed in India by M/s Electronic System, 84, Vivekanand Puri, Near Sarai Rohilla Police Station, Delhi-110007, and which is assigned the approval mark IND/13/95/72.



(Figure)

The model (see figure) is an electronic weighing instruments with digital display of FX series. The technical details of the machine are as follows:—

Manufacturer	M/s A & D Instruments Ltd.
Instrument	Abingdon Science Park, Abingdon,Oxford OX14 3Ys United Kingdom.
Name of the	Electronic weighing instrument with digital display.
Type :-	FX series
Maximum Capacity	310g
Verification	0.01g
Scale Interval 'e'	
Accuracy class	II
Display Unit	Vaccum Fluorescent indicator
Power supply	230v 50 Hertz a.c.
Temperarure range	+5C° to 40° C
Load receptor	105 mm diameter

Further, in exercise of the powers conferred by sub-section (12) of the said section, and on the basis of the certificate issued by the Netherland Meetinstituut, (NMI) Nerherland, the Central Government hereby declares that this certificate of approval of the model shall also cover the weighing instrument of similar make, accuracy and performance of same series with maximum capacity as given below, manufactured by the same manufacturer in accordance with the same principle and with the same materials with which, the approved model has been manufactured.

No	Maximum capacity	'e' value
FX-40	41 gram	0.001g
FX-200	210 gram	0.01g
FX-400	410 gram	0.01g
FX-1200	1200 gram	0.1g
FX-2000	2100 gram	0.1g
FX-3000	3100 gram	0.1g
FX-4000	4100 gram	0.1g
FX-6000	6100 gram	1g
Dual Range	FX-320	310 g/0.01 g, 60 g/0.001g
Dual Range	FX-3200	3100 g/0.1 g, 600 g/0.01g

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 15 जून, 1998

	(1)	(2)	(3)
	41 / 1	0.342	
	42	0.126	
ताजपुरा	12	0.013	
	14	0.051	
	16	0.051	
	17	0.266	
	18	0.164	
	19	0.025	
	22	0.063	
	23	0.076	
	24	0.240	
	25	0.177	
	26	0.304	
	37	0.013	
	43 मिन	0.202	
	44	0.304	
	48	0.126	
	56	0.202	
	57		
	58 / 1	0.531	
	58 / 2	0.417	
	67	0.208	
	68	0.063	
	69	0.063	
	70	0.253	
	71	0.076	
	72 / 1	0.139	
	72 / 3	0.126	
	78	0.190	
	80	0.063	
	81	0.278	
	82	0.038	
	83	0.076	
	85	0.126	
	86	0.026	
	87	0.051	
अरी नवाबाद	97	0.442	
	98	0.152	
	100	0.013	
	101	0.164	
	103	0.051	
	104	0.291	
	108	0.240	
	118	0.493	
	119	0.759	
महावन	8 / 10	0.506	
	8 / 11	0.354	
सेमरी चशीर	25	0.455	
	26	0.051	
	28 / 1	0.278	
	36 / 1	0.569	
	36 / 2	0.759	

तहसील : लटेरी	जिला : विदिशा	राज्य : मध्य प्रदेश
गाँव का नाम	सर्वे क्रमांक	क्षेत्र हेक्टेयर/ ओरे
(1)	(2)	(3)
चन्द्री	3	0.063
	4 / 2	0.557
	5 / 2	0.025
	5 / 3	0.051
	6	0.481
	36	0.152
	38 / 1	0.379
	38 / 2	0.291
	38 / 3	0.013
	39	0.240

(1)	(2)	(3)	(1)	(2)	(3)
	41	0.063		511 / 1	0.392
	42	0.329		512	0.063
	43	0.139		513	0.569
	48	0.423		518 / 2	0.076
	49	0.164		519 / 1	0.885
	50	0.253		520	0.126
रेणा	109 / 4	0.101		626	0.455
	110 / 1	1.670		635	0.354
	146	0.129		636	0.228
	148	0.038		637	0.367
	149	0.215		639	0.266
	150	0.240		640	0.177
	151	0.215		641	0.114
	160 / 2	0.025		646	0.063
नेपाली	86	0.455		727	0.759
	248	0.582		728	0.316
	249	0.329		729	0.468
	254	0.038		730	0.443
	308 / 1	0.010		731	0.240
	309	0.341		732	0.455
	314 मिन	0.316		734	0.367
	315	0.253		736	0.139
	316	0.253		758	0.089
	317 मिन	0.773		759	0.089
	320	0.025		760	0.013
	321	0.089		761	0.342
	322	0.316		316	0.215
लटेरी	231 / 2	0.911	लत्तचेया	317	0.367
	321	0.342		318	0.152
	322	0.329		321	0.291
	323 / 1	0.038		322	0.316
	325	0.316		323	0.405
	326 / 1	0.620		328	0.595
	336	0.013		329	0.531
	337	0.240		340	0.063
	338	0.266		342	0.708
	351 / 1	0.145		343	0.342
	352	0.481	भुगई खुर्द	56	0.177
	353 / 2926	0.481		64	0.607
	354	0.114		65	0.291
	355	0.101		71	0.253
	396	0.190	बहादुरपुर	56 / 1	0.101
	397	0.557		88 / 5	0.700
	398	0.304		89	0.091
	400	0.390		92	0.038
	408	0.013		99	0.220
	409	0.202		100	0.101
	503	0.860		101	0.455
	509	0.417		102	0.051
				141	0.330

(1)	(2)	(3)	(1)	(2)	(3)
	144	0.388		45	0.152
	145	0.379		47 / 2	0.038
	151	0.101		48	0.253
	164	0.260		49	0.114
	165	0.013		62 / 1	0.253
	168	0.471		62 / 2	0.164
	169	0.253		63	0.278
	171	0.230		64 मिन	0.240
	172	0.340		70 / 1	0.114
	173	0.051		78 / 1	0.126
	174	0.120		78 / 2	0.025
	175	0.740		87	0.013
मुख्यास	20	0.126		217	0.405
	24	0.417		218	0.025
	25 / 1	0.152		222	0.013
	25 / 2	0.469		223	0.013
	26	0.126		224	0.253
	30 / 1	0.152		225	0.152
	48	0.405		227	0.038
	50	0.392		228 / 2	0.013
	51	0.633		229	0.367
	60	0.089		256	0.025
	64	0.632		262	0.316
	82	0.531		263	0.152
	83	0.025		266	0.620
	84	0.025	चम्पलपुर	11	1.392
	86	0.013		14 / 1 / 14	0.177
	87	0.392	मरौरी	244	0.885
	88	0.481	लरिया	60	0.632
	90	0.013		66	0.126
	188 / 1	0.417		69	0.230
	188 / 2	0.392		70	0.230
	196 / 1	0.506		71	0.051
	197	0.354		72	0.405
	203	0.089		76	0.342
	204	0.051		89	0.304
	205	0.089		98	0.026
	245	0.328		99	0.177
	246	0.582		101	0.759
	251	0.025		195 / 3	0.250
	252	0.215		195 / 4	0.025
	253	0.101		202	0.038
	254	0.089		203	0.051
	256	0.089		242	0.202
	257	0.367		243	0.177
	258	0.190		244	0.228
बलरामपुर	18	0.013		245 / 1	0.228
	19	0.177		255	0.493
	20	0.038		256	0.139
	22	0.304			
	23	0.215			
	24	0.089			
	40	0.506			
	44	0.253			

[सं. आर-31015/32/97-ओ, आर-II]

के. सी. कटोच, अवर सचिव

Ministry of Petroleum and Natural Gas

(1) (2) (3)

5 / 3 0.051

New Delhi, the 15th June, 1998 6 0.481

36 0.152

38 / 1 0.379

38 / 2 0.291

38 / 3 0.013

39 0.240

41 / 1 0.342

42 0.126

Tajpura 12 0.013

14 0.051

16 0.051

17 0.266

18 0.164

19 0.025

22 0.063

23 0.076

24 0.240

25 0.177

26 0.304

37 0.013

43 Min 0.202

44 0.304

48 0.126

56 0.202

57] 0.531

58 / 1 0.417

58 / 2 0.208

67 0.063

68 0.063

69 0.063

70 0.253

71 0.076

72 / 1 0.139

72 / 3 0.126

78 0.190

80 0.063

81 0.278

82 0.038

83 0.076

85 0.126

86 0.026

87 0.051

Ari Nawabad 97 0.442

98 0.152

100 0.013

101 0.164

103 0.051

104 0.291

108 0.240

118 0.493

119 0.759

ScheduleTehsil : Lateri District : Vidisha State : Madhya Pradesh

Name of Village	Survey Nos.	Area Hectare/Are
(1)	(2)	(3)
Chanderi	3	0.063
	4 / 2	0.557
	5 / 2	0.025

(1)	(2)	(3)	(1)	(2)	(3)
Mahavan	8/ 10	0.506		408	0.013
	8 / 11	0.354		409	0.202
Semri Bashir	25	0.455		503	0.860
	26	0.051		509	0.417
	28 / 1	0.278		511 / 1	0.392
	36 / 1	0.569		512	0.063
	36 / 2	0.759		513	0.569
	41	0.063		518 / 2	0.076
	42	0.329		519 / 1	0.885
	43	0.139		520	0.126
	48	0.423		626	0.455
	49	0.164		635	0.354
	50	0.253		636	0.228
Rengana	109 / 4	0.101		637	0.367
	110 / 1	1.670		639	0.266
	146	0.129		640	0.177
	148	0.038		641	0.114
	149	0.215		646	0.063
	150	0.240		727	0.759
	151	0.215		728	0.316
	160 / 2	0.025		729	0.468
Nevli	86	0.455		730	0.443
	248	0.582		731	0.240
	249	0.329		732	0.455
	254	0.038		734	0.367
	308 / 1	0.010		736	0.139
	309	0.341		758	0.089
	314 min	0.316		759	0.089
	315	0.253		760	0.013
	316	0.253	Lalchiya	761	0.342
	317 min	0.773		316	0.215
	320	0.025		317	0.367
	321	0.089		318	0.152
	322	0.316		321	0.291
Lateri	231 / 2	0.911		322	0.316
	321	0.342		323	0.405
	322	0.329		328	0.595
	323 / 1	0.038		329	0.531
	325	0.316		340	0.063
	326 / 1	0.620	Bhugai Khurd	342	0.708
	336	0.013		343	0.342
	337	0.240		56	0.177
	338	0.266		64	0.607
	351 / 1	0.145	Bahadurpur	65	0.291
	352	0.481		71	0.253
	353 / 2926	0.481		56 / 1	0.101
	354	0.114		88 / 5	0.700
	355	0.101		89	0.091
	396	0.190		92	0.038
	397	0.557		99	0.220
	398	0.304		100	0.101
	400	0.390		101	0.455
				102	0.051
				141	0.330

(1)	(2)	(3)	(1)	(2)	(3)
	143	0.506		45	0.152
	144	0.388		47 / 2	0.038
	145	0.379		48	0.253
	151	0.101		49	0.114
	164	0.260		62 / 1	0.253
	165	0.013		62 / 2	0.164
	168	0.471		63	0.278
	169	0.253		64 min	0.240
	171	0.230		70 / 1	0.114
	172	0.340		78 / 1	0.126
	173	0.051		78 / 2	0.025
	174	0.120		87	0.013
	175	0.740		217	0.405
Murwas	20	0.126		218	0.025
	24	0.417		222	0.013
	25 / 1	0.152		223	0.013
	25 / 2	0.469		224	0.253
	26	0.126		225	0.152
	30 / 1	0.152		227	0.038
	48	0.405		228 / 2	0.013
	50	0.392		229	0.367
	51	0.633		256	0.025
	60	0.089		262	0.316
	64	0.632		263	0.152
	82	0.531		266	0.620
	83	0.025	Champatpur	11	1.392
	84	0.025		14 / 1 / 14	0.177
	86	0.013	Masuri	244	0.885
	87	0.392	Rusiya	60	0.632
	88	0.481		66	0.126
	90	0.013		69	0.230
	188 / 1	0.417		70	0.230
	188 / 2	0.392		71	0.051
	196 / 1	0.506		72	0.405
	197	0.354		76	0.342
	203	0.089		89	0.304
	204	0.051		98	0.026
	205	0.089		99	0.177
	245	0.328		101	0.759
	246	0.582		195 / 3	0.250
	251	0.025		195 / 4	0.025
	252	0.215		202	0.038
	253	0.101		203	0.051
	254	0.089		242	0.202
	256	0.089		243	0.177
	257	0.367		244	0.228
	258	0.190		245 / 1	0.228
Balrampur	18	0.013		255	0.493
	19	0.177		256	0.139
	20	0.038			
	22	0.304			
	23	0.215			
	24	0.089			
	40	0.506			
	44	0.253			

[File No. R-31015/32/97-OR. II]

K. C. Katoch, Under Secy.

श्रम मंत्रालय

नई दिल्ली, 28 मई, 1998

S.O. 1260.—आंदोलिक विवाद अधिनियम, 1947 (14 of 1947) का धारा 17 के अनुसार में बैंक्रीय सरकार गिडिट के प्रबंधनवाले के संवाद नियोजकों और उनके कर्मवारों के लिए, अनुबंध में निर्दिष्ट आंदोलिक विवाद में केन्द्रीय सरकार आंदोलिक अधिकरण, नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-5-98 को प्राप्त हुआ था।

[सं. प्र. 12012/243/88-आई. आर. (बी-III)]

पी. जे. माईल, इस्क अधिकारी

MINISTRY OF LABOUR

New Delhi, the 28th May, 1998

S.O. 1260.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Syndicate Bank and their workman, which was received by the Central Government on 27-5-1998.

[No. L-12012/243/88-IR (B-II)]

P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI

I. D. No. 129/88

In the matter of dispute :
BETWEEN

Shri Kanhaiya Manjhi,
C/o D. G. W. U.-A.
97, Karampura,
Shivaji Marg,
New Delhi.

Versus

Regional Manager,
Syndicate Bank,
Bhagwan Dass Road,
Flat No. 6,
New Delhi.

APPEARANCES :

Shri Harshvardhan : for the Workman.
Shri S. K. Taneja : for the Management.
1670 G/98—4

AWARD

The Government of India in the Ministry of Labour, vide its Order No. L-12012/243/88-D-2 (A), dated 4-11-1988 has referred the following industrial dispute to this Tribunal for adjudication :—

“Whether the action of the management of Syndicate Bank in terminating the services of Shri Kanhaiya Manjhi and not considering him for further employment, while recruiting fresh hands under Section 25-H of the I. D. Act, is justified ? If not, to what relief is the workman entitled ?”

2. In his statement of claim, the concerned workman has stated that he was given appointment as an Attender w.e.f. 16-4-1986 and he worked till 25-10-86 continuously and satisfactorily when his services were terminated illegally on 25-10-86 by the person, who was not competent to terminate his services. He has further stated that the post on which he was appointed, had not been abolished and new entrant junior to him, was engaged in his place. Thus, he has been denied opportunity to become a regular employee. Besides, he had lost the lien on appointment due to cancellation of his registration number of the Employment Exchange at the instance of the management and thus he has suffered an irreparable loss of the chance of earning his livelihood. It is further stated by him that the management assured him to engage, but despite that assurance, he has not been given any chance till date. He has sought his reinstatement with full back wages and continuity of service for the reasons aforesaid.

3. On the contrary, the case of the management is that the Bank in terms of the provisions of Shastri Award as well as the Bipartite Settlements, has been appointing persons for a limited period on temporary basis in connection with temporary increase in work or for leave gap arrangement. In all such cases, the persons so appointed are issued appointment letter indicating therein the period of their temporary employment. It is further stated by them that the concerned workman was called for the post of temporary Attender through Employment Exchange and he was offered employment, vide appointment letter No. 20/PD/6WS/APT/135, dated Nil as a temporary Attender to work at Karol Bagh for a period of 15 days with effect from 16th April, 1986 against a leave vacancy of the regular attenders Shri Madan Singh and Shri Vidhi Chand, who went on leave from 15-4-1986 onwards. It is further stated that the concerned workman was engaged by the Bank in several branches against leave vacancy of regular incumbent of the respective branches for the period indicated hereunder :—

Sl. No.	Name of the Branch	Period of temporary employment	No. of working days
1.	Karol Bagh	16-4-86 to 8-5-86	22
2.	Shahdra	11-5-86 to 8-6-86	29
3.	Chandni Chowk	16-6-86 to 30-6-86	15
4.	Green Park	2-7-86 to 16-7-86	15
5.	Delhi Cantt.	18-7-86 to 1-8-86	15
6.	Connaught Circus	5-8-86 to 13-9-86	40
7.	Nangalraya	18-9-86 to 21-10-86	34
8.	Asaf Ali Rd. Currency Chest	23-10-86 to 25-10-86	3
Total number			173 days

4. In reply to para No. 5 of the statement of claim, it has been stated by the management that after the concerned workman was offered temporary employment the intimation thereto was necessary to be given to the Employment Exchange as per rules, but it is wrong that the concerned workman was retained in regular employment and any such information was given to the concerned workman or to the Employment Exchange. The aforementioned details of working days have not been denied by the concerned workman.

5. It is further stated by the management that the concerned workman was validly relieved on 25th October, 1986 by the Manager of Asaf Ali Road Branch, as his temporary services were no longer required, on the direction of the Zonal Office i.e. the appointing authority. The case of the management, in brief, is that since the concerned workman was appointed temporarily against leave gap arrangement he acquires no right to claim permanent appointment in the service of the Bank.

6. The workman has filed 11 documents marked Exhibits W-1 to W-11 and has examined himself as DW-1/1. The management have filed nine documents and have examined Shri K. G. Gadiyar, Manager (Industrial Relations), I. R. Cell, Syndicate Bank, Zonal Office, 6 Bhagwan Dass Road, New Delhi as MW-1/1.

7. I have heard the representative of both sides.

8. From the documents on record, it is amply clear that the concerned workman was appointed purely as a temporary Attender to meet the exigency of leave gap arrangement as and when needed. It is also established from the evidence on record that he had worked against leave vacancy at different branches in total for 173 days intermittently during 16-4-1986 to 25-10-1986.

9. It is well settled that by working temporarily against leave vacancies, the incumbent does not acquire right to claim permanent employment in service, as such the concerned workman is not entitled to any relief.

10. The plea that his services were terminated by the incompetent authority is not substantiated from the documentary evidence on record. The

letter dated 25-10-1986 on record, clearly indicates that his services were terminated on the instructions of the Zonal Office, headed by the competent authority and not by the Manager on his own.

11. Besides, contention of the concerned workman that he has suffered irreparably due to intimation about his appointment sent by the Bank to the Employment Exchange from where his name had been sponsored, does not hold good. The intimation sent to the Employment Exchange was regarding his temporary employment, and on termination thereof the concerned workman was at liberty to approach the Employment Exchange thereafter. Apart from this from the telegram dated 28-7-1989 (Ext. W-11) on record, it is also clear that the concerned workman was subsequently given opportunity to appear for interview on 29-7-1989 for the post of Attender in pursuance to Bank's advertisement in Hindustan Times and Hindustan (Hindi) dated 28-7-1989.

12. Hence my Award is that the concerned workman is not entitled to any relief.

13. Award is given accordingly.

13-5-1998.

GANPATI SHARMA, Presiding Officer
नई दिल्ली, 28 मई, 1998

कांग्रेस 1261—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडिशन औद्योगिक वैक के प्रबंधनतात्र के संवेदनियों त्रिकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचाट को प्रशासित करती है, जो केन्द्रीय सरकार का 27-5-98 को प्राप्त हुआ था।

[लॉ.प्ल-12012/2/91-आई-आर० (बी-II)]
पी० ज० मार्फत, दैनिक अधिकारी

New Delhi, the 28th May, 1998

S.O. 1261.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi

as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Overseas Bank and their workman, which was received by the Central Government on 27-5-98.

[No. L-12012/2/91-IR(B-II)]

P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING
OFFICER, CENTRAL GOVT. INDUSTRIAL
TRIBUNAL, NEW DELHI

NEW DELHI

I.D. No. 8891

In the matter of dispute between:

Shri Vinod Kumar Taneja,
Clerk-cum-Cashier,
B-238, Derawal Nagar,
Delhi-110009.

Versus

Zonal Manager,
Indian Overseas Bank,
Zonal Office,
Rachna Bhawan,
Rajender Place,
New Delhi-8.

APPEARANCES:

Shri Inderjeet Singh—for the workman.

Shri K. K. Nirmal Industrial Relation Officer
with Sh. Nedu Maran—for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-12012/2/91-IR-B-2 dated 26-7-91 has referred the following industrial dispute to this Tribunal for adjudication:—

"Whether the action of the management of Indian Overseas Bank in terminating the services of Shri Vinod Kumar Taneja, Clerk-cum-Cashier is justified? If not to what relief is the workman entitled?"

The workman Vinod Kumar Taneja joined Indian Overseas Bank on 29-11-79 at Chandigarh wherefrom he was transferred to Rajinder Nagar Branch, New Delhi in November, 1980. As per his statement of claim he proceeded to U.S.A. on 9-4-82 to look after his cousin who has suddenly fallen ill there. He intimated the bank about his leaving for U.S.A. and requested for grant of leave for the period of his absence. Unfortunately, the workman suffered a severe attack of 'amoebic colitis' while in the U.S.A. and he could not return to India. He sent necessary medical certificates to the Management for extension of leave. He further met with an accident on 25-3-83 and was under treatment of the doctors there who declared him fit to travel on 6-12-83. Medical certificates about his involvement in the accident and request for extension of leave was duly sent. The workman could

return to India only in January, 84 and immediately reported to the Bank for resuming duty but was, however, shocked to learn that the Bank has illegally and arbitrarily terminated his services. The workman in his statement of claim has thus stated that the termination was illegal as his absence from duty was beyond his control and on unavoidable circumstances, he has over-stayed and he has prayed that he be reinstated with full back wages.

3. Management in its written statement on the other hand has alleged that the workman was in the habit of being on leave regularly from the date of his appointment. Every month he used to take leaves and many times on loss of pay also. The workman left for U.S.A. without any sanctioned leave and he did not comply with the mandatory provisions of Govt. Service Conditions. He failed to report for duty even after the expiry of leave and kept silent for a long time, letters and cable was sent to him to report for duty immediately and to show cause as to why action should not be taken against him but he did not give any response nor he reported for duty. He was sent another telegram dated 13-9-82 by the Management to show cause as to why his services could not be terminated. He did not reply to this as well. His services, therefore, stood terminated w.e.f. 13-12-82 after expiry of the notice period. The cases of illness and accident put forward by the workman were only after thoughts and he was not interested in joining the duties and had left for U.S.A. originally without getting the leave sanctioned from the Management.

4. The Management examined Shri J. K. Soed MWI and the workman himself appeared as WWI.

5. I have heard representatives for the parties and have gone through the record.

6. The representative for the management has alleged that the workman had absented from duty without getting any leave sanctioned and left for U.S.A. He has alleged that the workman has nowhere explained as to what was sudden and immediate cause for his departure to U.S.A. without waiting for the sanction of the leave. He has also urged and placed on record leave application of the workman while he was posted at Chandigarh and has pointed out that every month the workman used to take leave on one pretext or the other and many times even without pay. According to the management the leave of the workman was sanctioned after he had left for U.S.A. but from U.S.A. he never sent any intimation, extension of leave nor he responded to the notice and telegram sent to him for assuming his duties. The workman was not interested in continuing in the service of the management and had been trying to gain time. He might be interested in doing some business there and on being unsuccessful he thought of coming back and joined the job with the hope of getting back wages. The management had given due notice to the workman to which he did not respond for months together asking him to report for duty. The action of the management was, therefore, fully justified.

7. The workman representative on the other hand has urged that due to unfortunate circumstances and urgent case an official could proceed on leave without

obtaining prior sanction. He has also urged that the workman had been seeking request for extension due to circumstances beyond his control as he had met with an accident and was treated by a Doctor in U.S.A. who declared him fit in December, 83 and he then reported for duty in January, 84. The action of the management in terminating the services of the workman according to representative of the workman was not justified and his absence was fully explained.

8. On careful perusal of the points urged before me and the documents on record, I am of the opinion the workman in this case has not come with clean hands. According to his statement of claim he left on 9th April, 1982 to U.S.A. The application on record therefore received in the office on 7th of April, 1982 which states that he has to go to America to look after his cousin who was in family way. He managed for grant of privilege leave for one month from 12-4-82 to 11-5-82. He gave two addresses on this applications one was of Delhi and the other was U.S.A. address. After the expiry of this leave on 11-5-82 there was no letter from the workman and the management wrote a letter to him dated 28-7-82 asking him to report for duty within 30 days. Another letter dated 12-9-82 was then sent to the workman by the management asking him to report for duty within 3 months, in case of his not reporting for duty he was asked to show cause as to why his services should not be terminated. On 10-6-82 a letter was sent which was received by the bank on 17-6-82 in which the workman had stated that he was unable to join duty on the due date and he would be sending medical certificate. No date upto which he sought further extension was mentioned but was accompanied by a certificate from one Tejender Singh Walia in which he had advised the rest for more than three months. The same Doctor according to another certificate on record after one year found him fit and able to travel this is dated June 20th, 1983. He did not join even after this fitness but another certificate dated 6th December, 1983 shows that he had been under treatment of some other doctor due to pain which he sustained from an automobile accident. There is no certificate regarding the accident of the workman ever sent by him except one dated December 1, 1983 which refers to having seen this patient on April 8, 1983. He had, however, been declared fit to travel by a certificate of Tejender Walia produced by the workman himself that he was fit and able to travel on 20-6-83. Some of these certificates produced by the workman were contrary and he has also not produced his original passport on the basis of which he had left for U.S.A. He has stated that the said passport was lost. Photo copies of the above pass port he has produced bear the arrival and departure in different countries. The cross-examination of the workman, his affidavit, the document on record produced and his pleadings are contradictory in nature and cannot be relied upon. He has not come with clean hands and has not in any manner been able to establish that his absence from duty was for reasons beyond his control. He had not been responding to the letters written by the management asking him to resume duty and in fact he had not been taking his job with the bank seriously. He had applied for a

duplicate pass-port in October, November, 82 in U.S.A. He has not disclosed anywhere that he was employed with the bank and has stated that when he applied originally for his pass port he was in private service. He has intentionally not produced passport on the basis of which he has left for U.S.A. while in service with the management. On careful perusal of the points, documents on record and the statements of the witnesses, I am satisfied that the action of the management in terminating the services of the workman was fully justified and did not deserve any interference. The workman was not entitled to any relief in this reference. Parties are, however, left to bear their own costs.

20-5-98.

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 28 मई, 1998

का०आ० 1262.—आंदोलिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिडिकेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुवंश में निर्दिष्ट आंदोलिक विवाद में केन्द्रीय सरकार आंदोलिक अधिकरण, नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-5-98 को प्राप्त हुआ था।

[सं० एन-12012/18/94-ग्राह० आर० (बी०-II)]
पी० जे० माईकल, डैस्क अधिकारी

New Delhi, the 28th May, 1998

S.O. 1262.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Syndicate Bank and their workman, which was received by the Central Government on 27-5-58.

[No. L-12012/18/94-IR(B-II)]

P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE SHRI GANPATH SHARMA, PRESIDING OFFICER : CENTRAL GOVT.
INDUSTRIAL TRIBUNAL
NEW DELHI
I.D. No. 56/94

In the matter of dispute between :

Shri Rakesh Kumar through Mandal Sachiv,
Syndicate Staff Association (Regd.) Ram
Naresh Bhawan, Tilak Gali, Pahar Ganj
New Delhi-55.

Versus

The Chief Manager, Syndicate Bank, Punjabi
Bagh, New Delhi.

APPEARANCES :

Shri N. K. Goel for the workman.

Shri Rajesh Mahindru for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-12012/18/94-L.R.B-2 dated 13-4-1994 has referred the following industrial dispute to this Tribunal for adjudication :—

“Whether the action of the management of Syndicate Bank, New Delhi, in terminating the services of Shri Rakesh Kumar, a part time sweeper with effect from 10th February, 1993, is justified ? If not, what relief is the said workman entitled to?”

The Workman's case in his claim petition is that he worked in the Branch Office, Punjabi Bagh, New Delhi, of the Bank, as a badlee Sweeper of Shri Dhan Raj, part time sweeper till January, 1990. After the resignation of Shri Dhan Raj in 1990, he worked as regular employee of the Bank as part-time sweeper until 9th February, 1993 without any break whatsoever. The management did not observe the procedure laid down under para 19 of the Bipartite Settlement, 1966 to terminate the services of the workman and it is stated that in place of him (Shri Rakesh Kumar) one Shri Hari Prasad was given employment.

2. However, the workman in his rejoinder stated that in fact from 1st January, 1992, to 9th February, 1993, he worked continuously for more than 240 days, and as such, is entitled to the benefits of a permanent employee of the Bank. It is stated that he was required to fill the prescribed form i.e. 0685 A on 25th June, 1992, for absorption as a regular part-time sweeper and the workman was absorbed in the service of the Bank against a permanent vacancy. It was clarified that Shri Hari Prasad was employed from 16th January, 1993.

3. That the management/Bank contested the claim on the ground that there is no relationship of workman and employer between the parties, and as such, the present claim petition is not maintainable. It is not denied that the petitioner was engaged some days during the period between April, 1988 and February, 1993 as a Badlee part-time sweeper during the leave or absence of regular part time sweeper. His engagement with the respondent/bank was purely temporary and that he cannot claim permanency just because he had worked for certain days in 2-3 years. It is made clear that as per the guidelines/orders issued by the Government of India while filling up vacancies in public sector institutions, especially the respondent-bank, the recruitment is required to be made through approved channels only i.e. in case of subordinate cadre, like attenders and part-time sweepers, etc. the candidates who are sponsored by the employment exchange only should be given employment even for temporary period as far as possible.

4. That the petitioner filed his own affidavit and the respondent/management filed the affidavits of Shri P. S. Lobo, MW1 and Shri R. Venkataraman, MW2 and the witnesses of the parties were cross-examined. The Petitioner in his cross examination admitted that he was working as badlee sweeper of Shri Dhan Raj whenever he was on leave or otherwise absent. After the resignation of Shri Dhan Raj, he continued to work as part time sweeper and that he requested the Bank for regularisation and for that

he was asked to submit his prescribed proforma along-with his particulars and recommendations of the Branch and that he has denied that his application for regularisation was not approved by the Bank Branch; but he said that he has no proof of the recommendations of the Bank Branch. He further stated that he did not disclose in the proforma about the fact of his grand mother working as part time sweeper in the Bank nor did he disclose about the criminal case pending against him in the said proforma. He admitted that Shri Hari Prasad is working as badlee part-time sweeper still in branch. The workman failed to establish that he worked for 240 days in any calender year. MW1 and MW2 also denied in cross examination that workman worked for 273 days in 1991 and that workman worked from 1-1-1992 to 10th February, 1993 without any leave and break.

5. That from the pleadings and from the evidence of the parties on record, it is clear that the Petitioner worked as badlee swēper in place of Shri Dhan Raj a part time sweeper. After his resignation, the petitioner worked as temporary part-time sweeper on some days between 1st January, 1992 to 9th February, 1993 subject to his being regularly absorbed as per the guidelines orders of the Government of India for filling up vacancies by recruitment. In the present case, the admitted case of the Petitioner is that he applied for regularisation and submitted his prescribed proforma alongwith the recommendation of the Branch to the competent Authority to enable the Bank to recruit him as per the guidelines but the petitioner did not fulfil the requirements and that he did not disclose about the criminal case pending against him and further the Branch of the Bank where he was working temporarily did not recommend his case as his work was not satisfactory and as such his service could not be regularised, as the engagement of the petitioner in the respondent, Bank was purely temporary during the absence of a regular part-time employee between 1st January, 1992 to 9th February, 1993, the Petitioner cannot claim permanency/regularisation. It is now settled law that if a person is engaged on temporary basis cannot claim permanency over it though he had worked for many number of days continuously in that job particularly when there is a prescribed procedure for recruitment to filling up permanent vacancies as it will encourage backdoor recruitment causing prejudice to the competent and qualified aspirants who are waiting to get employment through proper channel, such as employment exchange etc.

6. In view of the above discussion, the action of the management of the Syndicate Bank in terminating the services of the workman—a part time sweeper is justified. The workman is not entitled to the relief either for reinstatement or for regularisation or for any compensation. The reference is, therefore, answered against the claimant and in favour of the management/Bank. Parties are left to bear their own costs.

नई दिल्ली, 28 मई, 1998

कांग्रेस 1263.—आंदोलिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केनरा बैंक के प्रबंधाता के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्विष्ट आंदोलिक विवाद में केन्द्रीय सरकार आंदोलिक अधिकरण, नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-5-98 को प्राप्त हुआ था।

[सं. एल-12012/44/86-आई. आर. (बी. -II)]

पी. जे. माइकल, डैस्क अधिकारी

New Delhi, the 28th May, 1998

S.O. 1263.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Canara Bank and their workman, which was received by the Central Government on 27-5-1998.

[No. L-12012/44/86-IR(B-II)]
P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA : PRESIDING OFFICER : CENTRAL GOVT. INDUSTRIAL TRIBUNAL : NEW DELHI

I.D. No. 62/86

In the matter of dispute between :

Shri Arvind Bhatnagar, 30, Behari Nagar,
Ghaziabad.

Versus

The Manager, Canara Bank, Circle Office,
Marshal House, Parliament Street, New
Delhi.

APPEARANCES :

Shri Sham Naiam on behalf of Shri T. C. Gupta
for the workman.

Shri Jagat Arora for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-12012/44/86.D-2(A) dated 28-7-1986 has referred the following industrial dispute to this Tribunal for adjudication :—

“Whether the demand of Shri Arvind Bhatnagar for reinstatement in service by the successor employer Canara Bank management is justified ? If not, to what relief is the concerned workman entitled ?”

2. The brief facts as stated in the statement of claim by the workman are that he was appointed as part time pass-book writer by the erstwhile Laxmi Commercial Bank Limited at Ghaziabad branch on

5-5-1982. An appointment letter to this effect was also issued to him. Though the appointment was initially for a period of 5 months but it continued after the expiry of the said period till 31-10-1983 and from 1-11-1983 he was taken up as full time clerk at the same branch. His name was maintained on the regular muster roll of the branch. After the workman had continued as full time clerk for about 17 months from 1-11-1983 his services were abruptly terminated by the bank head office on 27-3-1985 without any notice. He approached the authorities protesting against the said action and demanding his reinstatement but to no effect. On the failure of the conciliation proceedings the matter was referred to this Tribunal for adjudication.

3. The management in its written statement alleged that the Laxmi Commercial Bank Limited was merged with the Canara Bank under the scheme of amalgamation as provided under Banking Companies (Acquisition & Transfer of Undertaking) Act, 1970. The said amalgamation took place on 27-4-1985 and on the said date of amalgamation Arvind Bhatnagar was not in the employment of Laxmi Commercial Bank nor his claim was pending before the court. So he could not claim any relief before the Management.

4. The claimant had also filed a Civil Suit No. 758/84 in the Civil Court at Ghaziabad claiming a declaration that he be treated as permanent employee of the erstwhile Laxmi Commercial Bank. The said suit was dismissed by the Civil Court and this fact was admitted by the workman. The very appointment of the workman was void ab initio and he could not even be engaged as Pass Book Writer under the scheme exclusively meant for students. The services of the workman were terminated on 27-3-1985 and as a measure of abundant caution payment of retrenchment compensation was also made to him. It was done as soon as management of the bank came to know about unauthorised continuance of the workman in the employment of the bank. Since the initial appointment was obtained by fraud and the subsequent continuance in the employment of the bank was unauthorised. The provisions of the I.D. Act were not attracted.

5. The Management examined Rattan Lal Sharma MW1 while the workman himself appeared as WW1.

6. I have heard representatives for the parties and have gone through the record.

7. The representative for the workman has urged that the workman was appointed as a part time clerk on 1-11-1983 by the management and he continued to work upto 27-3-1985. He had thus completed more than 240 days and was, therefore, entitled to be regularised and termination order passed on 27-3-1985 was not justified.

8. He has also urged that the question of the workman having filed any civil suit in the court was not relevant and this Tribunal was only to decide the reference as made to it by the Ministry of Labour.

9. The Management representative on the other hand has urged that the case of the workman was not at all justified as he had obtained the initial

appointment by fraud and mis-representation. The scheme of employing part time pass-book writer was meant for students and the workman in his statement admitted that he was not student at the time he was employed. The representative has further urged that the workman could not be appointed as a clerk by the Manager and, therefore, was not regularly employed official. The Manager if appointed him had gone out of his jurisdiction and could not do so in view of the fact that the regular recruitment board was in existence for recruitments of clerks. He has also urge that the Civil Court had dismissed the suit of the workman at Ghaziabad which was filed by the workman for declaration to the effect that he was regular employee of the Laxmi Commercial Bank.

10. After having gone through the points urged before me by the representatives of the parties, I am of the opinion that the workman has not come to the court with clean hands. The scheme of appointment of part time pass book writer was meant for students and as admitted by the workman himself, he was not a student in 1982 when he was appointed as such. A Manager was not competent to appoint a full time clerk in the bank and if he had given any appointment to him that was an illegal appointment and a wrong-ful act of an employee of which benefit could not be given to the workman. Moreover, erstwhile Laxmi Commercial Bank amalgamated with the Canara Bank on 27-4-1985 on that date according to the scheme of the amalgamation and only those employees who were in the employment on the said date were to be treated as employees of the new Canara Bank. The workman was not in the employment of the bank on 27-4-1985.

11. That the very appointment of the Claimant is void ab initio and being so claimant has no locus standi to maintain the present claim. Shri Arvind Bhatnagar was not even a bona fide student so as to be engaged as Part Time Pass Book Writer under the scheme meant exclusively for the students. The engagement/appointment of Claimant even as a Part Times Pass Book Writer is not valid. The Claimant himself has contradicted his own statement during cross-examination and said that he was not a student in 1982. The policy/scheme for engaging student as Part Time Pass Book Writer has been placed on record and the circulars dated 4-12-1980, 20-1-1981, 02-11-1981 and 17-3-1982. This is supported by MWI/1, Shri Rattan Lal. The initial engagement of Claimant was only for five months which was obtained by the Claimant by misrepresentation/fraud that he was a student. In fact as admitted by him during his cross-examination, he was not a bona fide student and even not eligible under the scheme for appointment as Part Time Pass Book Writer. Therefore, no legal right would accrue to the Claimant for maintaining the present claim against the Bank. The initial appointment having been obtained by committing fraud in the Bank is void and therefore the Claimant has no legal right to maintain any claim against the Bank and not entitled to any relief from the Bank. In case Rita Maria & Others Vs. Director Primary Education AIR 1988 Patna 26 Full Bench it was held as under :—

"that once it is found that the very appointment is illegal and is honest in the eye of law, no statutory entitlement for salary, etc., would arise. If the very appointment is rested on forgery no standing right can flow from it."

In another case Ernalloor Service Coop. Society Vs. Labour Court 1986 II LLJ 492 Kerala it was held as under :—

"that the appointment made without authority of law is void ab initio and such appointment can be terminated without enquiry".

In case Ajay Kumar Minz Vs. State of Bihar & Others 1994 I LLN 229 Patna it was held as follows :—

"that the appointment made found to be tainted with malafides, manipulations and nepotism and such person cannot be allowed to keep an advantage which he obtained by fraud. There was no need to comply with principles of natural justice."

12. As is evident from Ext. MW1/M1 that the Branch Manager had no authority to make any appointment in the clerical cadre. Shri Arvind Bhatnagar claims to have been appointed by the Branch Manager who had no authority. There was a circular issued in August 1982 whereby the temporary persons engaged by the Branch Managers were to be discontinued. With the connivance of the then Branch Manager, Shri Vijay Kumar, the Claimant worked from November, 1983. The then Branch Manager, Shri Vijay Kumar was charge sheeted vide charge sheet dated 21-9-1984 for making unauthorised and illegal appointment and finally he was terminated from the services of the Bank. The Claimant during his cross-examination on 01-2-1994 has stated that he was asked to continue to do the work by Shri Vijay Kumar, the then Manager. The Branch Manager having not empowered to make any appointment in the clerical cadre and particularly the Claimant's engagement being in connivance with Shri Vijay Kumar, the then Branch Manager, was void ab initio and the Claimant can have no right to claim any relief, as no right much less any legal right would flow from such unauthorised and illegal appointments.

It is clear from the records and from the cross-examination of the Claimant that the Claimant was not even a bona fide student whom the scheme of appointment of Part Time Pass Book Writer was meant for, the Claimant obtained the part Time Pass Book Writer appointment by mis-representation and by fraudulent means. Therefore, there would accrue no legal right to the Claimant to claim employment with the Management as the Claimant has even no locus standi to claim the same.

13. Shri Arvind Bhatnagar was terminated vide letter dated 27-3-1985 and as measure of abundant caution payment of retrenchment compensation was also made to him. It was done as soon as the Management of the Bank came to know about the unauthorised continuance of Shri Arvind Bhatnagar in the employment of the Bank. Since the initial

appointment was obtained by fraud and subsequent continuance in the employment of the Bank was unauthorised the provisions of the Industrial Disputes Act would not be attracted. Therefore there was no retrenchment of services of the Claimant.

14. It is clear from circular dated 16th March, 1984 issued by the Lakshmi Commercial Bank Ltd. that there were unauthorised appointment and those persons who had not completed 240 days of working days during the period from 25-1-1983 to 25-1-1984 should be terminated. The Claimant has alleged that he was working from 1-11-1983 and therefore he had not completed 240 days as on 25-1-1984 and therefore would not entitle to the benefit of this circular. By this circular his services should have been terminated immediately by 25-1-1984 but the Claimant was illegally and unauthorisedly allowed to continue by the then Branch Manager against whom disciplinary action was taken. The documents filed by the Claimant, i.e., the letter dated 01-09-1982 was not admitted by the Bank and it was only marked as Mark-A. On the face of it, it is clear that this document is not a genuine document. MW1 in his cross-examination has stated that he did not accept the letter dated 01-9-1982 of the Ghaziabad Branch (Mark-A). He also further stated that he came to know about unauthorised appointment of Shri Arvind Bhatnagar in 1985 only. Therefore, the continuance of the Claimant in the employment of the Bank was illegal and by committing fraud on the Bank. Mark-A, i.e. letter dated 01-9-1982 was not proved at all. The letter has been typed out whereas on the top in the columns "from" and "to" have been written in hand, it does not bear any reference number and there is no proper signature. All these tend to believe that the document is not a genuine document but a forged and a fabricated one. Similar is the case of document dated 15-3-1984 which was also not proved. In any event these alleged documents supposed to have been in possession of the Bank and there was no reason how it came to the possession of the Claimant. This too indicates that the document was fabricated by the Claimant himself for his ulterior purposes.

15. The documents filed by the Management vide its List dated 8th January 1991 and other documents filed by the Bank, i.e. the circulars regarding the scheme for appointment of Part Time Pass Book Writer, etc., all stand proved and also the documents filed v/d List dated 24-3-1991. As is well known that the recruitment to the clerical cadre in the Bank is made through the Banking Service Recruitment Board (BSRB) which fix eligibility norms and conducts test, interview, etc., and thus select candidates for appointment in the Bank. No one can be appointed without undergoing the prescribed recruitment procedure. No back door entry in the public employment is permissible as is held by the Hon'ble Supreme Court in the case of Horticulture case.

16. In view of my discussion above I am of the opinion that the workman was not entitled to any relief of this case and the action of the management was

fully justified. Parties are, however, left to bear their own costs.

15th May, 1998.

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 28 मई, 1998

का०ग्रा० 1264.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक आफ इंडिया, नई दिल्ली के प्रबंधतंत्र के मंचन नियोजकों और उनके प्रमकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-5-98 को प्राप्त हुआ था।

[मंज्ञा पत्र-12012/127/89-ग्राह्य आर० (वी-3)/बी-1]
मी० जे० माईकल, डेस्क अधिकारी

New Delhi, 28th May, 1998

S.O. 1264.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of India, New Delhi and their workman, which was received by the Central Government on 28-5-98.

[L-12012/127/89-R(B-3)]

P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA : PRESIDING OFFICER : CENTRAL GOVT. INDUSTRIAL TRIBUNAL : NEW DELHI

J.D. No. 73/89

In the matter of dispute between :
Shri Rishi Pal, Guard,
S/o Shri Sri Chand,
Village & P.O. Fatehpuri Beri,
New Delhi-110030.

Versus

General Manager,
State Bank of India,
11, Sansad Marg, New New Delhi-110001.

APPENDICES :

Shri S. K. Patni for the workman.
None for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-12012/127/89-LR. (B-3) dated nil has referred the following industrial dispute to this Tribunal for adjudication :--

"Whether the action of the management of State Bank of India, New Delhi is justified in terminating the services of Sh. Rishi

Guard, w.e.f. 31-12-1984? If not, to what relief, the workman concerned is entitled to?"

2. The workman in his statement of claim alleged that he worked with the management bank in different branches as per details given below :

"Darya Ganj

Branch 66 days (3 days in 1983 & 63 in 1984)

Mehrauli

Branch 34 days (in 1984)

Uttam Nagar

Branch 56 days (in 1984)

Ansari Nagar

Branch 84 days (in 1984)

244 days"

The workman worked for 240 days in one calendar year and became a permanent employee as per rules laid down under the I.D. Act. The Bank under its transfer policy transferred him from one branch to another and he thus served the same institution for all days. The persons even who fell in the category of badli/daily wage persons were entitled to all benefits under section 25-F of the I.D. Act after completing 240 days service in 12 calendar months. The workman was removed from service w.e.f. 31-12-1984 without assigning any reason and without any notice or benefits under section 25-F of the I.D. Act. He was an ex-service man and his termination was illegal and he deserves to be reinstated with full back wages. He has also filed alongwith his statement of claim four certificate pertaining to his having worked during this period.

3. The Management in its written statement alleged that the management being a public sector institution is a well established recruitment system. The workman was never recruited through any regular system and was never transferred by the management from one branch to another. The branches in which the workman allegedly worked were under the different Regional Managers and there could be no transfer from one branch to another in the manner alleged by the workman. The Management also denied the working of the workman for more than 240 days in one calendar year. The workman was more qualified than required for the post and was not entitled to be appointed to the said post and his appointment was absolutely void.

4. The workman appeared himself as W.W.-1/1 while the management examined Shri D. P. Bhagat M.W.-1 in support of their case.

5. I have heard representatives for the parties and have gone through the record.

6. The main important point to be decided in this case was whether the workman had completed 240 days in one calendar year or not in order to find his eligibility for regularisation or protection under section 25-F of the I.D. Act. For calculating the number of days the workman has put in with the management, the last working days of the workman was 31-12-1984. He shows to have completed 240 days in the calendar year of 1984 in all

the four annexures filed by him. The days for which he worked have been given are reproduced below :—

"

State Bank of India,
Darya Ganj, Delhi-110006
Telegram : NABOL DELHI.
Dated 9th Nov., 1984.

TO WHOM IT MAY CONCERN

This is to certify that Shri Rishi Pal worked with this Office as guard, as per details given hereunder :—

PERIOD	No. of days
29-12-83 to 31-12-83	3
1-1-84 to 15-1-84	15
23-1-84 to 24-1-84	2
16-3-84	1
29-4-84 to 31-5-84	33
	54

Further certified that work and conduct of Shri Pal was found satisfactory during the period he worked at this Office.

Sd/-

Sd/-
illegible

BRANCH MANAGER"

State Bank of India
Mehrauli,
New Delhi-110030.
Date : 4-1-1985.

TO WHOM IT MAY CONCERN

This is to certify that Shri Rishi Pal S/o. Shri Sri Chand residence of village and P. O. Fatehpur, Beri, New Delhi has worked for 34 days at this Branch as badli guard (Temporary Guard) on daily wages. The details are as under :—

PERIOD	DAYS
15-8-84 to 16-8-84	2
19-8-84 to 24-8-84	6
7-9-84	1
17-9-84 to 19-9-84	3
27-9-84	1
2-10-84	1
4-10-84 to 8-10-84	5
10-10-84 to 15-10-84	6
9-11-84 to 11-11-84	3
18-11-84	1
20-11-84 to 23-11-84	4
7-12-84	1

Total Days

34

Thirty Four Days.

State Bank of India,
Daryaganj, Delhi-110006.
Date : 3rd Jan. 1985.

TO WHOM IT MAY CONCERN

Certified that Shri Rishi Pal has worked with us as a guard for 12 days on the dates mentioned hereunder :—

PERIOD	No. of Days
8-12-84 to 9-12-84	2
11-12-84 to 17-12-84	7
29-12-84 to 31-12-84	3
Total	12

Sd./-
Branch Manager".

Region : III
State Bank of India,
Delhi Regional Office,
Dated : 8 April, 1986

The Personnel Officer,
State Bank of India,
Personnel Section,
Delhi Regional Office,
New Delhi.
STAFF : SUBORDINATE
PROTECTED EMPLOYEE
SHRI RISHI PAL : GUARD.

With reference to our Memorandum No. DRO/R. III/252, dated the 18th March, 1986, we have to advise as under :—

(a) Our Uttam Nagar Branch has advised us that date of declaration in respect of Shri Rishi Pal, Guard is 23-2-1984.

(b) Date wise detail of temporary services rendered by Shri Pal at our Uttam Nagar Branch is as under :—

23-2-84, 27-2-84 to 29-2-84	—4 days.
1-3-84 to 7-3-84, 12-3-84 to 14-3-84, 17-3-84, 19-3-84 to 31-3-84	—24 days.
1-4-84 to 25-4-84	—25 days.
Weekly off 8-3-84, 26-4-84, 27-4-84	—3 days.
Total	—56 days.

2. We shall be glad to receive your advice in the matter.

Sd./-

Regional Manager,
G. L. A.".

"State Bank of India,
Ansari Nagar, New Delhi-110016.
Dated : 24-1-1985.

TO WHOM IT MAY CONCERN

This is to certify that Shri Rishi Pal son of Shri Shri Cand, resident of Fatehpur Bari, New Delhi-

110030, has worked as Guard at this branch for 88 days as per details given below :—

17-1-84 to 21-1-84	5 days
3-6-84	1 day
8-6-84 to 10-5-84	3 days
4-7-84 to 15-7-84	12 days
6-8-84 to 7-8-84	2 days
27-8-84 to 31-8-84	5 days
1-9-84 to 3-9-84	3 days
12-9-84 to 15-9-84	4 days
23-9-84	1 day
9-10-84	1 day
25-9-84	1 day
16-10-84 to 31-10-84	16 days
2-11-84 to 8-11-84	7 days
13-11-84 to 16-11-84	4 days
19-11-84	1 day
24-11-84 to 30-11-84	7 days
1-12-84	1 day
4-12-84 to 5-12-84	2 days
10-12-84	1 day
12-12-84 to 28-12-84	11 days
Total	88 days

Sd./- Branch Manager".

7. If we calculate these number of days put in by him from January to December 31, 1984 the total comes to 237 and not 240. So in order to be eligible to be covered under the provisions of Section 25-F he must prove his having worked for 240 days during the whole year of 1984. But the total of these days comes to only 237.

8. Moreover, there is no appointment letter issued to him for the days stated by him and there is no transfer order of any authority vide which he was transferred from one branch to another and there is thus no corroboration to what he has alleged in his statement of claim. The continuity of the workman for all these dates could be considered only if there had been an appointment letter with him from any common authority and it appears that he used to go to the branch concerned for working on daily basis wherever there was any leave vacancy. He was thus not appointed by the management and was working on daily basis, with break on different dates. A perusal of these points leads only to the conclusion that since the workman has not completed 240 days in a calendar years so he could not be deemed to be in continuous service of the bank. The protection under Section 25-F was not available to him. He, therefore, could not be regularised as Guard with the Management. The workman was, therefore, not entitled to any relief in this case. Reference is answered accordingly. Parties are, however, left to bear their own costs. Dated : 20-5-1998.

GANPATI SHARMA, Presiding Officer.

नई दिल्ली, 28 मई, 1998

का. ना. 1265.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 7 के प्रनुसारण में, केन्द्रीय सरकार स्टेट बैंक आफ इंडिया, आगरा के प्रबंधनतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण, नई दिल्ली के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-5-98 को प्राप्त हुआ था।

[संख्या एल-12012/194/94-आई० आर० (बी-1)]

पी० जे० माइकल, डैस्क अधिकारी

New Delhi, the 28th May, 1998

S.O. 1265.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government, Industrial Tribunal, New Delhi, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of India, Agra and their workman, which was received by the Central Government on the 28-5-98.

[No. L-12012/194/94-I.R (B-1)
P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL, NEW DELHI
I. D. No. 63/96

In the matter of dispute :

BETWEEN

Shri Ramdin Tiwari through
Mahasachiv, S.B.C.S.K. Sangh,
Ram Bagh Bye-pass, Ferozabad Road,
Sita Nagar, Agra-282001.

Versus

Up Mahaprabandhak,
State Bank of India,
Zonal Office,
Sanjay Place,
Agra-282001.

APPEARANCES :

Shri Ram Din Tiwari—in person.

Shri D. V. A. Shastry—for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-12012/194/94-I.R. (B-1), dated 4-6-96 has referred the following industrial dispute to this Tribunal for adjudication :—

"Whether the action of the management of S.B.I. Agra in imposing the penalty of stoppage of increments on Shri Ramdin Tiwari is just and legal? If not to what relief the workman is entitled to?"

2. The brief facts of this dispute are that Ramdin Tiwari was working as Guard at State Bank of India, Balkeshwar Colony Branch. He committed some irregularities while performing his duties for which he was charge sheeted on 29-3-90. He did not reply to the charge sheets and the Management appointed an enquiry officer on 20-12-90. The workman participated in the enquiry and was represented by a representative of his choice. The enquiry officer concluded his enquiry on 26-8-91 and he found him guilty of the charges No. 1, 2, 4 and 6. Charge No. 3 was partially proved. Charge No. 5 and 7 were held not proved. The Disciplinary Authority after going through the report and the documents give him the punishment of lowering two stages of salary slabs for two years on 14-11-97. Aggrieved

from this order the workman approached the Government of India who made the present reference to this tribunal to adjudicate as to whether action of the management in imposing the penalty on Ram Dn Tiwari was just and fair.

3. The Management in its written statement denied the allegations of the workman that the enquiry was not fair or he was being harassed due to his Trade Union Activities. The workman in his statement of claim has alleged that he was responsible for setting up the union of which he was the Secretary and was taking interest in the Trade Union Activities on behalf of his colleagues. The Management has denied all these allegations and alleged that the action was taken against him only according to rules, the enquiry was fair and proper and punishment was awarded to him according to the result of the enquiry by the Competent Authority.

4. The following two issues were framed :

1. Whether the domestic enquiry conducted against the workman is fair and proper?

2. As in the terms of reference?

5. The management examined Shri A. K. Aggarwal as its witness while the workman himself appeared in support of his case as WW1.

6. I have heard representatives for the workman and the representative for the management and have gone through the record

7. The workman has alleged that the enquiry was not fair and proper and no opportunity was afforded to him for proving the falsehood of the whole enquiry and the charges levelled against him. The Management representative on the other hand has referred to the statement of the management witness. He has also referred to the statement of the workman where in he has admitted receipt of the documents during the enquiry. The representative of the management has pointed out that the workman could not point out any irregularity in the enquiry or any violation of principles of natural justice by the enquiry officer.

8. After having gone through the evidence produced by the parties and the documents on record, I am of the opinion that the workman in his statement of claim has referred to irrelevant and unnecessary allegations against the entire management though the only point to be decided by this Tribunal according to the reference made by the Government of India was regarding the action of the management in stopping the increment of the workman. Regarding the incorrectness of the enquiry or the partial attitude of the enquiry officer the workman in his statement of claim has not brought out any point on the basis of which this court could arrive at the conclusion that the enquiry was not fair and proper. The record of this case shows that the workman was himself a Union Leader and was defending his case himself and was also being represented by representative of his own choice. The enquiry officer during the entire enquiry has not been shown as biased or prejudiced against the workman and his findings are based on the record and evidence produced before him out of 7 allegations/charges made against the workman in the charge sheet charge No. 1 to 4 and 6 have been duly proved while charge No. 3 was partially proved. Charge No. 5 and 7 were held not proved by the enquiry officer. If the enquiry officer was in any way prejudiced against the workman he could have moved the authorities for change of the enquiry officer but no such thing was done by him. The workman has also not been able to show by his evidence in this court anything prejudicial or against the principles of natural justice done by the enquiry officer against him. I, therefore, am of the opinion that the enquiry conducted against the workman by the management was fully legal and justified.

9. I have heard the management and the workman on the quantum of sentence awarded to the workman. I am fully satisfied that the punishment did not call for any interference by this Tribunal. I, therefore, hold that the action of the management by imposing the penalty of stoppage of increments was fully justified and legal. Parties are, however, left to bear their own costs.

28th April, 98.

GANPATI SHARMA, Presiding Officer.

नई दिल्ली, 28 मई, 1998

कानूनों 1266.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक आफ इंडिया के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-5-98 को प्राप्त हुआ था।

[सं. एल-12012/216/84-आई० आर० (बी-II)]

पी० जे० माईकल, डैस्क अधिकारी

New Delhi, the 28th May, 1998

S.O. 1266.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of India and their workman, which was received by the Central Government on 27-5-98.

[No. L-12012/216/84-IR (B-II)
P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL,
NEW DELHI

LD. No. 51/86.

In the matter of dispute :

BETWEEN

Shri Shyam Lal through,
The General Secretary,
Bank of India Staff Union,
C/o. Bank of India,
12-B, Connaught Place, New Delhi.

Versus

The Zonal Manager,
Bank of India,
Northern Zone,
Herald House,
Bahadurshah Zafar Marg.,
New Delhi.

APPEARANCES :

Shri Sham Narain on behalf of Shri T. C. Gupta—for
the workman.
Shri Jagat Arora—for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-12012/216/84-D.II(A) dated 5-5-86 has referred the following industrial dispute to this Tribunal for adjudication :—

"Whether the action of the Management of Bank of India, New Delhi in not promoting Shri Shyam Lal, Sub-Staff (now staff clerk, Northern Zonal Audit Office, New Delhi) as Daftary with effect from 11-11-80 was justified? If not, to what relief the workman is entitled?"

2. Briefly stated, the case of the workman as stated in the statement of claim is that Shri Shyam Lal had joined the Bank as a member of subordinate staff in the Bank that when the vacancy of Daftary occurred at Greater Kailash Branch in 1980 he was the seniormost eligible member of subordinate staff in Delhi and as such entitled to be posted as Daftary in the said vacancy, that, instead of posting him as daftary in the said vacancy, the management posted one Shri T. C. Ramola as Daftary in the said vacancy of Daftary

though he was junior to Shri Shyam Lal, that this was done without any good or cogent reasons being conveyed to Shri Shyam Lal for not offering the post of Daftary in the said vacancy, that by such arbitrary and unjustified action of the management Shri Shyam Lal was deprived of the posting to this special allowance carrying post from 11-11-80 till 1-4-81 when he was promoted as a clerk and that as a result of this he was further denied the benefit of Daftary's special allowance being accounted for in fitment of his clerical pay on promotion from 1-4-81. It has, therefore, been claimed by the Union that Shri Shyam Lal be treated as a Daftary from 11-11-80 when his junior Shri T. C. Ramola was made a Daftary and that he be paid the special allowance of this post for the period from 11-11-80 till he was promoted as clerk on 1-4-81 and be given the benefit of this special allowance in the fitment of his clerical salary w.e.f. 1-4-81.

3. The management in its written statement has alleged that the assignment of duties of daftary only entitled the incumbent to the special allowance of this post which did not involve any promotion, that the Bank is free to assign the special allowance duty including that of a daftary to any one of the eligible subordinate staff, that merely because Shri T. C. Ramola was junior to Shri Shyam Lal it could not be said that he was discriminated against in assigning the duties of special allowance to his junior, that Shri T. C. Ramola drew more salary on account of his getting the special allowance of daftary and no promotion was involved in this case, that Shri Shyam Lal was also offered the special allowance duty of daftary which he did not accept and so the duties were offered to Shri T. C. Ramola that Shri Shyam Lal is not entitled to daftary's special allowance as he did not perform the duties of the post, and that the only dispute to be decided by the Tribunal in the present case is about the claim of Shri Shyam Lal for Daftary's special allowance from 11-11-80 till his promotion to clerical cadre.

4. The Management in this case examined Shri J. C. Khanna MW1 and O. P. Sharma MW2 and the workman appeared himself as WW1.

5. I have heard representatives for the parties and have gone through the record.

6. Representative for the workman has urged that the action of the management was not at all justified in not giving the allowance carrying post to the workman who was senior most daftary when the vacancy arose at Greater Kailash Branch. According to the Bipartite Settlement such vacancies always go to the senior most as they carry the special allowance but the same was denied to the workman. He has further urged that the management has failed to prove that the workman has refused to accept the same. The said vacancy could be given to T. C. Ramola only after the management has proved the same.

7. The Management on the other hand has urged that the workman had refused to accept the said vacancy as the same was far away from the place he was working. Though the management has not been able to bring on record any written refusal of the workman but even an oral denial was sufficient for the purpose. The post was not a promotion but was only allowance carrying vacancy which could go to any other eligible person if the senior most did not accept the same.

8. After having gone through the points urged before me by the representatives for the parties, I am of the opinion that there is no dispute that Shyam Lal was senior most person at the time the vacancy arose on 11-11-80. It is not proved from any record that any intimation or consent of Shyam Lal was obtained by the management as to whether he was willing to accept the vacancy at Greater Kailash I Branch or not. The offer acts of organisation like banks are expected to be done in a regular manner and order/circulars are issued only in writing and not verbally. No circular regarding this vacancy seems to have been made by the management. The refusal of the acceptance of this special allowance carrying post by the workman Shyam Lal was not established which was required to be proved by the management. Shyam Lal was, therefore, entitled for the special allowance for the period from 11-11-80 till he was promoted as a clerk on 1-4-81. Since the post was only

a special carrying allowance post and was not a promotion so Shyam Lal was not entitled to the benefit in the filament of the clerical salary w.e.f. 1-4-81. He could be paid only the cash special allowance which he was deprived off.

9. The other point of the management that No Dispute Award was passed by the Kanpur Court in this case and this reference was illegal was also not at all justified. The Government of India in the Ministry of Labour has already referred to this fact that while making this reference to this Tribunal and after having considered that point, the earlier reference not having been passed on merits made this reference to this Tribunal for adjudication on the request of the workman.

10. I, therefore, hold that the reference was legally correct and the workman was entitled to special allowance from 11-11-80 to 1-4-81. Parties are, however, left to bear their own costs.

14th May, 1998.

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 28 मई, 1998

का. आ. 1267.—श्रीदोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के प्रतिसरण में, केन्द्रीय सरकार स्टेट बैंक आफ पटियाला, पटियाला के प्रबंधतालं के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुशंसा में निर्दिष्ट श्रीदोगिक विवाद में केन्द्रीय सरकार श्रीदोगिक अधिकरण, नई दिल्ली के पंचपट को प्रकाशित करती है, जो केन्द्रीय को 28-5-98 को प्राप्त हुआ था।

[सं.-एल-12012/310/87-डी-II (ए)/बी. I]

पी. जे. माइकल, डैस्क अधिकारी

New Delhi, the 28th May, 1998

S.O. 1267.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State of Patiala, Patiala and their workman, which was received by the Central Government on 28-5-98.

[No. L-12012/310/87-D. II (A)/B.I.]

P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL,
NEW DELHI

I.D. No. 105/87

In the matter of dispute :

BETWEEN :

Shri S. M. Salwan, C/o. Prabhat Studio,
Prahlad Market, Karol Bagh, D. B. Gupta Road,
New Delhi-110005.

Versus

General Manager,
State Bank of Patiala,
Head Office, The Mall,
Patiala.

APPEARANCES :

Workman in person.

None—for Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-12012/310/87-D.II(A) dated 26-11-1987 has referred the following industrial dispute to this Tribunal for adjudication :—

"Whether the action of the management of State Bank of Patiala, in dismissing from service Shri S.M. Salwan with effect from 25-1-85 is justified ? If not, to what relief is the workman entitled ?"

2. The concerned workman joined Bank on 5-1-1973 as Peon at Main Branch of the Bank at Amritsar. At the time of his dismissal from service, he was working as Cashier-cum-Clerk and was posted at Shradhanand Marg Branch, Delhi.

3. The concerned workman, while was posted at Nalagarh Branch (Himachal Pradesh), he was charge-sheeted vide Charge-sheet dated 10-3-1983, which read as under :—

"No. RM/JI/Insp/114,
Dated : 10th March, 1983.
Phagun 19th, 1904 Saka.
State Bank of Patiala,
Regional Office,
SCO 175-176,
Sector 17-C,
Chandigarh-160017.
Telephone 26186.

Private/Confidential,
Shri S. M. Salwan,
Cashier-cum-Clerk,
State Bank of Patiala,
Fatehabad (Distt. Hissar).
Regional-II Chandigarh.

Dear Sir,

Charge Sheet.

While posted as Cashier-cum-Clerk from 13th April, 1981 to 20th December, 1982, at our Nalagarh Branch, you are alleged to have committed the undenoted acts for which you are served upon the following charge-sheet :—

(i) that on the 5th April, 1982, Shri Badri Dutt, an employee of Tubewell Corporation D. N. II, Nalagarh, visited our Nalagarh (Main) branch to receive payment of their Cheque No. 366033 dated 5-4-1992 for Rs. 6336.60 (Rupees six thousand three hundred thirty six and paise sixty only). You are alleged to have made payment of Rs. 5336.60 (Rupees five thousand three hundred thirty six and paise sixty only) to Shri Badri Dutt instead of Rs. 6336.60p. Shri Badri Dutt immediately pointed out to you that the amount delivered to him was short by Rs. 500/- (Rupees five hundred only) then you advised him to come back after 2 P.M. But when he contacted you at about 2 P.M. you advised him that you had made him over Rs. 6336.60 you thus made him payment of Rs. 5836.60 instead of Rs. 6336.60 and thereby by making short payment you lowered the image of the Bank. Your aforesaid act amount to gross misconduct in terms of clause 19.5(j) of the Bipartite Settlement, 1966.

(ii) that on the 5th April, 1982, a sum of Rs. 100/- was alleged to have been found excess in your cash on account of amount allegedly paid less to one Shri Rup Lal. Later on, it was found that Shri Rup Lal received Rs. 470/- and not Rs. 370/- as wrongly shown by you in your cash scroll. The entry of Rs. 470/- was scored off by you to read as Rs. 970/- and then changed to Rs. 470/- You purposely falsified the branch books to conceal the fact and showed excess of Rs. 100/- in your cash to prove your innocence in the matter of short payment of Rs. 500/- to Shri Badri Dutt as referred to in Charge No. 1 above. You thus committed acts prejudicial to the interests of the Bank in terms of Clause 19.5(j) of the Bipartite Settlement, 1966.

(iii) that Shri P. S. Sethi, Officer from Vigilance Cell visited Nalagarh branch on the 15th February, 1982 to investigate into the matter regarding loss of Bank Draft leaves. While Shri Sethi was taking the statement of Shri S. S. Rawat, Record Keeper-cum-Godown Keeper and while Shri Rawat had hardly concluded his statement and signed the statement which was also witnessed by Shri Ashok Kumar Bhalla, Manager (Officiating). You entered the Manager's room and took away the statement of Shri Rawat from the table and tore the same. You also shouted at the Branch Manager and thus committed gross misconduct in terms of Clause 19.5(c) of the Bipartite Settlement, 1966.

2. You are advised to submit your reply to the charge-sheet within seven days i.e. by 19th March, 1983, positively failing which it will be presumed that you have no explanation to offer then the matter shall be proceeded with further. Yours faithfully,

Sd/-

Regional Manager-II,
Chandigarh,
(Disciplinary Authority)".

4. Charges in the aforementioned charge-sheet since were denied by the concerned workman, the domestic enquiry was instituted, wherein all the three charges were found proved, on the basis of which the concerned workman was dismissed from service vide order dated 24-1-1985, which is reproduced as here-in-below :—

"No RM I/P/2386,
Dated, 24-1-1985.

State Bank of Patiala,
Head Officer, The Mall,
Patiala-147001.
Telegram : Bankhead

Shri S. M. Salwan, Cashier-cum-Clerk,
State Bank of Patiala, S. N. Marg,
New Delhi.

Dear Sir,

DISCIPLINARY ACTION

This is with reference to the show-cause notice No. RM-I/P/177, dated 2-1-1985 served upon you and your personal appeal to the undersigned on 15th January, 1985.

2. As the charges enumerated in the charge-sheet served upon you on 10th March, 1983, as proved against you are very serious, you have lost the confidence of the Management. As these are gross misconduct on your part in terms of Bipartite Settlement and the Awards applicable to award staff employees, you are hereby dismissed from the Bank's service with effect from 25th January, 1985 in terms of Clause 195(a) of the Bipartite Settlement, 1966 read with provisions of Sastri/Desai Awards, 3rd Bipartite Settlement, 1979 and 4th Bipartite Settlement, 1984.

3. A copy of the enquiry report has already been sent to you vide our letter No. RM-1/P/177, dated 2nd January, 1985.

Yours faithfully,

Sd/-

Regional Manager-I,
Disciplinary Authority."

5. The concerned workman has assailed his dismissal from service on the ground that the same is illegal. He has also stated that the enquiry has not been conducted fairly and properly. According to him, the findings of the Enquiry Officer are perverse.

6. The management have denied all the allegations of the concerned workman stating that the action of the management has all along been quite fair and proper.

7. Out of the pleadings of the parties, the following preliminary issue was framed :—

"Whether the domestic enquiry conducted against the workman, is fair and proper ?"

8. During the proceedings in the instant case on 20-7-89, both the parties stated that they do not want to produce any oral evidence on preliminary issue and place reliance on the documents already filed in the present case.

9. The workman has filed 11 documents with his statement of claim.

10. The management have filed eight documents vide their list of documents dated 11-4-1988.

11. I have heard both the parties and have gone through the documentary evidence on record.

12. Perusal of the enquiry proceedings reveals that the concerned workman had been given full opportunity of defence. He has been allowed defence representative of his choice, opportunity of cross-examination of the management witnesses, inspection of the relevant documents, as also to lead evidence in his defence. Therefore, I am of the view that the domestic enquiry conducted against the concerned workman, is absolutely fair and proper.

13. I have examined the findings of the Enquiry Officer in the context of the evidence on record before him. It is found established from the evidence on record of the domestic enquiry that an attempt to prove his innocence in the matter of short payment of Rs. 500 made by him to Shri Badri Dutt, the concerned workman knowingly altered the figure of Rs. 470 to read as Rs. 970 and then changed it again to Rs. 470 while the actual position on 5-4-1982 on cash payment counter was that Mr. Rup Lal had been paid Rs. 370 and not Rs. 470 and, therefore, at the time of the closing of cash, there was excess of Rs. 100. Under no circumstances, Rs. 970 was to be paid to Shri Rup Lal. Such sort of dishonest conduct on the part of paying cashier is really a matter of serious concern and cannot be dealt with leniently.

14. From the evidence on record of the domestic enquiry, both oral and documentary, it is also found proved that the payment made by the concerned workman to Shri Badri Dutt at the counter was short of Rs. 500, which ultimately was misappropriated by the concerned workman. The Charge No. 3 of disorderly behaviour, on the premises of the Bank, has also rightly been found proved by the Enquiry Officer in the enquiry. Therefore, I do not find any substance in the allegation of the concerned workman that the findings of the Enquiry Officer are not based on the evidence on record before him.

15. Now, let me examine the proportionality of the punishment awarded by the Disciplinary Authority to the concerned workman. The gravity of the charges found proved in the domestic enquiry need to leniency. For the gross misconduct, as proved against the concerned workman in the domestic enquiry, it can certainly be inferred safely that the concerned workman has lost confidence of the management. After all, Bank is a financial institution in public sector and integrity of the staff is a must. In this background, I am of the view that punishment by way of dismissal was the only just punishment. There is no disproportionality between the misconduct and the punishment.

16. Hence, my Award is that the dismissal of the concerned workman by way of punishment by order dated 24-1-1985 is not bad. Consequently the concerned workman is not entitled for any relief. Parties shall, however, bear their own costs.

Dated : 20-4-1998

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 28 मई, 1998

का.ग्रा. 1268.—भौद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केन्द्रा बैंक के प्रबंधतात्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्विष्ट भौद्योगिक विवाद में केन्द्रीय सरकार भौद्योगिक अधिकारण, नई दिल्ली के

पंचाट को प्रकाशित करती है, जो केम्ब्रिय सरकार को 27-5-98 को प्राप्त हुआ था।

[सं. एल-12012/357/91-आई. आर. (बी-II)]
पी. जे. माईकल, डैस्क अधिकारी

New Delhi, the 28th May, 1998

S.O. 1268.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the industrial dispute between the employer in relation to the management of Canara Bank and their workman, which was received by the Central Government on 27-5-1998.

[No. L-12012/357/91-IR (B-II)]
P. J. MICHEAL, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI

I. D. No. 27/92

In the matter of dispute :

BETWEEN

Shri R. S. Chhikara, Special Assistant,
r/o 125/4, Nai Basti, Bahadurgarh,
(Haryana).

Versus

The Management of Canara Bank,
Marshal House, Hanuman Road,
Parliament Street,
New Delhi-110001.

APPEARANCES :

None for parties.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-12012/357/91-IR (B-II) dated 13-3-92 has referred the following industrial dispute to this Tribunal for adjudication :—

"Whether the Dy. General Manager, Canara Bank, New Delhi was justified in dismissing Shri R. S. Chhikara, Special Assistant, Sadar Bazar, Main Branch w.e.f. 6-6-90? If not, to what relief is the workman entitled to?"

2. The workman in his statement of claim alleged that he has been working with the management since 1974 as clerk in difference branches. On 13-6-88 Shri O. P. Bhagwat the then Manager of the Canara Bank, Bara Tooti, Sadar Bazar forced the workman as temporary incharge of Outab Road Branch of Canara Bank which was 1 km. away from the Sadar Bazar Branch. There were no proper facilities like drinking water, toilet and no proper cleanliness and on account of the aforesaid circumstances no Manager or Senior Accountant was ready to work there and even most of the staff members had refused to work there. There were so many operational irregularities and the records of the lockers, pass books not completed for so many years, proper balance sheet not taken and differences in ledgers and as per Reserve Bank of India guidelines Saving Banks Accounts not operated since more than two years were not segregated to in operative account etc. The workman under the compulsion of the then Manager took charge on 13-6-88 of the said branch. The workman was supposed to work under odd circumstances. The workman opened about 1000 saving bank accounts during the period 13-6-88 to 21-2-90 and deposit of the branch increased from 1.20 crore to 1.50 crore. One K. P. Prabhakar was sent by the management to see the affairs of the said branch and set them right. The workman brought to his notice the irregularities of the

said branch and was assured full co-operation. The workman was, however, shocked to find that he could be suspended on 27-2-90 on a false and fabricated charge sheet dated 31-3-90 which was served on him. The workman got a reply to the charge sheet prepared from one Gopal Pd. and signed the same and submitted to the Management. The reply was not accepted and enquiry was ordered on 14-5-90 with Kanwar Ashok Kumar as Enquiry Officer. The Enquiry Officer in violation of the principles of natural justice committed the enquiry in arbitrary manner found the workman guilty of the charges and passed dismissal on each of the three charges levelled against him.

3. The Deputy General Manager of the management bank agreed with the findings as recommendation of the enquiry officer and imposed punishment of dismissal for each of the charge. The services were terminated w.e.f. 15-6-90. The enquiry conducted against the workman was not according to rules and principles of natural justice and the action of the management aginst him was highly unjustified and illegal. proper opportunity was not afforded to him to defend himself.

4. Management in its reply alleged that the charges levelled against the workman were fully proved during the enquiry and full opportunity was afforded to the workman and he was found to have committed a fraud amounting to Rs. 1,09,500. The workman was served with the proper charge sheet. Enquiry was conducted by Kanwar Ashok Kumar. The workman an Officer of the bank had committed fraud causing fictitious entries and during the investigation the workman h.d made statement dated 19-2-90 supplemented by 23-2-90 in which he admitted/confessed the allegations made against him. In reply to the charge he has admitted the charges levelled against him before the Enquiry Officer unconditionally and also stated that he had committed the fraud because of his alleged deb'tedness. The proceedings terminating his services were taken according to rules and regulations. services of the workman and no violation of any regulation was committed in the whole of the process.

5. The Management examined Kanwar Ashok Kumar MW-1 and the workman himself appeared as WW-1, and filed affidavit Ex. WW-1/1.

6. I have heard workman and the representative for the management and have gone through the record.

7. The workman has not been able to point out any irregularity during the enquiry. The fact that the enquiry was conducted in short period by the Enquiry Officer is attributable to the effect that the workman had himself confessed his guilt not only before the Investigation Officer but even before the Enquiry Officer. Even in this statement in the court he admitted that during the enquiry he had deposited Rs. 53,000 out of the alleged fraud of Rs. 1,09,500. He also stated that he has prayed for mercy petition but the same was not accepted in appeal. There seems to be absolutely no reason to disbelieve his own statement in which he has admitted the fraud committed by him. The procedure adopted by the Enquiry Officer was just and fair and full opportunity was afford'd to the workman to defend himself. I am, in view of this situation, of the opinion that the Enquiry conducted by the management was fair and proper.

8. I have heard representatives for the parties and on the question of punishment awarded to the workman and I am satisfied that the punishment awarded to the workman was fully justified according the offence committed by him. He has himself admitted his guilt and committed the fraud with the bank and defrauded the bank to the tune of more than one lakh. There seems to be no reason to interfere in the action taken by the management in this regard. I, therefore, hold that the action of the management was fully justified and there was no ground to interfere. Parties are, however, left to bear their own costs, of this dispute.

Dated : 18th May, 1998

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 28 मई, 1998

का आ 1269.—श्रौद्धोगिक विवाद प्रधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन बैंक के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट श्रौद्धोगिक विवाद में केन्द्रीय सरकार श्रौद्धोगिक अधिकरण, नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-5-98 को प्राप्त हुआ था।

[सं एल-12012/540/88/प्राई. आर. शी-II]

पी. जे. माईकल, डैस्क अधिकारी

New Delhi, the 28th May, 1998

S.O. 1269.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Bank and their workman, which was received by the Central Government on 27-5-98.

[No. L-12012/540/88-IR(B-II)]
P. J. MICHEAL, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL, NEW DELHI

I. D. No. 38/89

In the matter of dispute between :

Shri Vinod Kumar Bakshi through
President Shri R. K. Gulati,
Federation of Indian Bank Employees Unions,
Indian Bank, Ambala Cantt.-133001.

Versus

Zonal Manager,
Indian Bank,
1/E, Jhondewalan State,
near Naz Cinema,
New Delhi-110055.

APPEARANCES :

None for the workman.

Shri A. K. Upadhyaya on behalf of Sh. V. K. Rao for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-12012/540/88-D-2(A) dated 20-3-89 has referred the following industrial dispute to this Tribunal for adjudication :—

"Whether the action of the management of Indian Bank in imposing the punishment of recovery of amount equivalent to £ 180 i.e., actual loss suffered by the Bank from Shri Vinod Kumar Bakshi is justified ? If not, to what relief is the workman entitled ?"

2. The workman in his statement of claim has alleged that a recovery of 180 pound has been imposed on the workman as actual loss by the management for which he was charged sheeted. He has alleged that he was served with a charge sheet dated 16-2-83 and an enquiry was conducted against him by the management. The Enquiry Officer held charges proved against him without going through the record. The concerned authorities ordered the recovery of Rs. 2871/- from the workman as equivalent to 180 pounds while such arrangement was not provided in the standing orders.

3. The Management in its written statement alleged that the punishment imposed on the workman was according to rules and this Tribunal was not sitting as Appellate Authority and could only see the justification of the act of the Management. It has also been urged that the enquiry was conducted according to rules and the punishment was imposed on the workman by the competent authority.

4. The Management examined Shri P. L. Narsimha MW1 while the workman himself appeared as WW1.

5. I have heard representative for the parties and have gone through the record.

6. The sole point to be considered in this case was as to whether the punishment not provided in the Bipartite Settlement could be imposed on the delinquent employee or not. Clause 19.6 of the Bipartite Settlement lays down the punishment that can be imposed on employee who has been found guilty of gross misconduct the punishment provided are as under :—

- (a) Be dismissed without notice, OR
- (b) Be warned or censured, or have an adverse remark entered against him; OR
- (c) Be fined, OR
- (d) Have his increment stopped; OR
- (e) Have his conduct condoned and be merely discharged."

7. The Management, however, has not imposed any punishment mentioned in above while they have ordered the recovery of Rs. 2871/- from the workman. In view of this situation that there is no provision of recovery of any amount in the list of punishment that could be awarded to the workman, the punishment could not be said to be justified. I, therefore, hold that the punishment granted to the workman was not justified and the action of the management was not according to law. The recovery if made is liable to be returned to the applicant. However, the management was at liberty to take any other action permissible according to law. Parties are left to bear their own costs.

19th May, 1998

GANPATI SHARMA, Presiding Officer

नई दिल्ली 1 जून, 1998

का.आ. 1270.—श्रौद्धोगिक विवाद प्रधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक आफ मदुरा लि. कलकत्ता के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट श्रौद्धोगिक विवाद में केन्द्रीय सरकार श्रौद्धोगिक अधिकरण, कलकत्ता के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-5-98 को प्राप्त हुआ था।

[सं एल-12012/185/95-प्राई. आर. (शी-I)]

पी. जे. माईकल, डैस्क अधिकारी

New Delhi, the 1st June, 1998

S.O. 1270.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure in the industrial dispute between the employers in relation to the management of Bank of Madura Ltd. Calcutta and their workman, which was received by the Central Government on the 29-5-1998.

[No. L-12012/185/95-IR (B. I)]

P. J. MICHAEL, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL AT CALCUTTA

Reference No. 37 of 1996

PARTIES :

Employers in relation to the management of
Bank of Madura Ltd., Calcutta.

And

Their workman.

PRESENT :

Mr. Justice A. K. Chakravarty—Presiding Officer.

APPEARANCE :

On behalf of Management :

Mr. P. B. Chowdhury, Advocate with Mr. S. Paul,
Advocate.

On behalf of Workman .

Mr. A. C. Chattopadhyay, Advocate.

STATE : West Bengal. INDUSTRY : Banking.

AWARD

By Order No. L-12012/185/95-IR(B.I) dated 14th December, 1996 the Central Government in exercise of its powers under section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Bank of Madura Ltd., Calcutta as claimed by the workman Srikanta Bhakat in making him work from 1986 to 1989 and also to work under different names and subsequently terminating him from service in March 1993 is legal and justified ? If not, to what relief is the workman entitled ?"

2. The case is not in today's list but it is taken up at the request of the parties. Learned Advocate for the workman files an application under the signature of the concerned workman stating that the workman is no longer interested to proceed with the case. Learned Advocate for the workman prays for a "No Dispute" Award. Though the learned Advocate for the management is not present, Miss P. Dutta, Assistant General Manager of the Bank is present for the Bank and submits that she has no objection, if a "No Dispute" Award is passed by the Tribunal.

3. Since the concerned workman who raised the present dispute is no longer interested to proceed with the case, as stated in his application, the reference be disposed of by a "No Dispute" Award. A "No Dispute" Award is accordingly passed.

This is my Award.

A. K. CHAKRAVARTY, Presiding Officer

Dated, Calcutta,

The 15th May, 1998.

1670 GI/98-6

नई दिल्ली, 4 जून, 1998

सा. श्रा 1271—श्रीद्वयिक विवाद अधिनियम, 1947 (1247 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ब्रिटिश बैंक मिडिल ईस्ट के प्रबंधतान्त्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट श्रीद्वयिक विवाद में केन्द्रीय सरकार श्रीद्वयिक अधिकारण, नं 2, मुम्बई के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-6-98 को प्राप्त हुआ था।

[संख्या एल-12012/275/97-आई. आर. (बी-1)]

पी. जे. माईकल, ईस्क अधिकारी

New Delhi, the 4th June, 1998

S.O. 1271.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal No. 2, Mumbai as shown in the Annexure, in the industrial dispute between the employers in relation to the management of British Bank of Middle East and their workman, which was received by the Central Government on 3-6-98.

[No. L-12012/275/97-IR(B-I)]

P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT :

Shri S. B. Panse, Presiding Officer.

REFERENCE NO. CGIT-2/48 OF 1997

Employers in relation to the management of
British Bank of Middle East.,

AND

Their Workmen

APPEARANCES :

For the Employer : Shri P. K. Rele, R. N.
Shah & A. M. Pota, Advocates.For the Workmen : Ms. Kunda N. Samant, Ad-
vocate.

Mumbai, dated 15th May, 1998

AWARD-PART-I

1. The Government of India, Ministry of Labour, by its letter dated 18th of September, 1997 had referred to the following Industrial dispute for adjudication :

"Whether the action of the management of The British Bank of the Middle East in im-
posing the punishment of Dismissal from service on Shri Marcus S. Lobo is legal and
justified ? If not, to what relief the work-
man is entitled?"

Shri M.S. Lobo (hereinafter called as workman)
was appointed in Award staff in the British Bank of
Middle East (hereinafter called as the management)/

somewhere in 1975. It is pleaded that he holds a Master degree and passed AIB London, part-I. He is from a respectable family and his relations to the other colleagues are good. He helped them for settling their matters with the management. His service records was unbleinished.

2. The workman averred that there is an internal Union of Employees who operates in the British Bank of the Middle East.

3. The workman averred that on 20-9-93 Mrs. Dinaz Awari made a false, baseless character assassinating allegation against him to the effect that he wrote a indecent letter to her amongst other things to the Union over which he was shocked. After learning this, he immediately wrote to Mr. N. M. Chopra, the Acting Manager of the Bank with a copy to the Secretary of the Union narrating the true facts and requesting for conducting an inquiry in the matter.

4. It is averred that thereafter the workman was issued a charge sheet dt. 26-10-93 (Ex. 10|8). In short, in the charge sheet it is alleged that due to the indecent, vulgar, threatening and obnoxious letter to Mrs. Dinaz Awari, he had committed an act which is indecent behaviour on the premises of the Bank as per paragraph 19.5(c) and doing any act prejudicate to the interest of the Bank for gross negligence involving or likely to involve Bank in serious loss under paragraph 19.5(J) of the Bipartite settlement. The workman denied the charges. He claimed that he may be allowed to engage the service of an Advocate to defend his case but he was not allowed to do so. It is averred that he was not supplied with necessary documents for bringing the Experts evidence. It is pleaded that the Inquiry Officer wrongly relied upon the Experts evidence of Mr. Wagh who was not submitted for cross-examination nor he was in a position to cross-examine the other Hand Writing Expert. It is pleaded that he was not given a personal hearing at the time of commenting on the Inquiry Officer's report before the Disciplinary Authority. It is pleaded that under such circumstances it is to be said that the domestic inquiry which was held against the workman was against the Principle of Natural Justice.

5. The workman averred that the findings of the Inquiry Officer are perverse and are not based on the evidence before him. It is submitted that the Inquiry Officer relied upon the evidence which is not legal and proper. For all these reasons it is submitted that the domestic inquiry which was held against the workman may be set aside and he may be reinstated in service with continuity and all monetary benefits.

6. The management resisted the claim by the written statement (Ex-8). It denied that all the allegations made by the workman in the statement of claim (Ex-7). It is asserted that the domestic inquiry was as per the principle of Natural Justice. The workman was allowed to defend his case as per paragraph 19.12 of Bipartite settlement of 1966. It is submitted that the findings of the Inquiry Officer are based on the evidence before him. It is pleaded that the documents which were asked for were supplied to the workman. It is averred that the workman was given

a personal hearing by the Disciplinary Authority. It is submitted that there is no merit in the case of the workman and the reference may be answered accordingly.

7. The workman filed a rejoinder at Ex-9 and reiterated the contentions taken by him in statement of claim and denied the averments made by the management in the written statement which are against him.

8. I have framed issues at Ex-12. Issue Nos. 1 and 2 are to be tried as preliminary issue and my findings thereon are as follows :

Issues	Findings
1. Whether the domestic inquiry conducted against the workman was against the principles of natural justice ?	Yes
2. Whether the findings of the inquiry officer are perverse ?	Yes

REASONS

9. To boaster up the case the workman lead evidence at Ex-14 and relied upon the documents which he filed at Exts-11 and 13. As against that, Mr. Manoj Soni, (Ex-17) Presenting Officer, led evidence on behalf of the management had relied upon the documents which they filed alongwith Ex-10.

9A. It is not in dispute that the service conditions of the workman and the procedure for disciplinary authority are governed by the Bipartite settlement dt. 19-10-66 and as per the Shastry Award, Desai Award and further Bipartite settlement.

10. On 24th of August, 1993, a postal envelope addressed to Staff officer Miss Garda was received by her during the working hours. Inside the envelope there was an unsigned letter addressed to D. Awari a lady staff. It also contained two empty covers of condoms. Miss Garda being a friend of Awari handed over the whole envelope alongwith its contents to Awari. After reading the contents of the letter Awari was disturbed. In fact Garda was also disturbed. They fell sick. Ultimately Awari decided to trace out who is the author of that act with the consent of the officer when she realised that the letter is written by the workman. She took the admitted hand writing to one Mr. Wagh, Hand writing expert. He confirmed that the disputed hand writing is of the person of admitted hand writing. Then Awari approached the Union. The Union asked the workman to apologise but he refused to do so and wrote to the management to hold an inquiry in respect of the same. This copy was also sent to the Union.

11. The management there after appointed one Mr. H. D. Gaijar, a hand writing expert. He was supplied with hand writing samples of the workman alongwith unsigned letter and envelope which was received by Mrs. Garda. The Expert examined the documents and confirmed that the samples submitted by the management was of the same person as the hand writing on the unsigned letter and envelope. It is not in dispute that the samples which were supplied to the hand writing expert were that of the workman.

It is not in dispute that though the unsigned letter alongwith the condoms were received by Mrs. Garda and were for Award. From the perusal of the inquiry report it is very clear that the sole reliance of the Inquiry Officer is on the report of the hand writing expert. No doubt, he had made some observations of the evidence which was led by other management witncsses.

12. It is not in dispute that the workman from the initial stage approached the management to allow him to defend his case by engaging an Advocate. No doubt at one stage he tried to engage one Mr. Joshi an Office bearer of the Union from other bank to defend his case but could not materialise. The result was that there was nobody to help the workman as his request to engage services of an advocate was rejected by the management.

13. Paragraph 19.12 of the Bipartite settlement deals with the procedure when a domestic inquiry is to be conducted against the work staff. Paragraph 19.12 (a)(i) to (iii) reads as follows :

(i) (x) by a representative of a registered trade union of bank employees of which he is a member on the date first notified for the commencement of the enquiry.

(y) where the employee is not a member of any trade union of bank employees on the aforesaid date, by a representative of a registered trade union of employees of the bank in which he is employed.

OR

(ii) at the request of the said union by a representative of the state federation or all India Organisation to which such union is affiliated;

OR

(iii) with the Bank's permission, by a lawyer.

14. It is the case of the management that they allowed the workman to be represented as per the procedure laid down in paragraph 19.12. It can be seen that the Union by its letter dated 6th December, 1993 (Ex. 11|13) informed the workman that the workman and the lady, both being the members of the Union, they cannot take side of any one member jeopardising the rights of other member. They regret that they cannot represent or defend anybody in the matter. Thereafter he again requested the Inquiry Officer to allow him to engage an advocate by his letter dated 7th December, 1993. (Ex-11|14) But no permission was granted by the management to defend his case.

15. Thereafter the workman approached the Federation, State Bank of Employee's Federation to represent his case through Mr. Joshi. But the Federation declined to help him contending that union is its member. He accordingly informed the Inquiry Officer by his letter dated 28th December, 1993 (Ex-11|25) Mr. Lobo affirmed to that effect. This position is not denied by the management. Now, it

can be seen that the workman tried to comply with the procedure contemplated under 19.12, but he could not succeed to get any representative there under. The remedy which is open to him was to engage an advocate by paying him advocate fees. But the advocate can be engaged only if the bank gives permission. Now, it is to be seen whether the action of the bank under such circumstances is justified in refusing such a permission.

16. After perusal of the charge sheet it is very clear that the wordings of the charge sheet, facts mentioned in the charge sheet are very simple in nature. It cannot be said to be complicated. But the management had relied upon the hand writing expert evidence to prove that the unsigned letter and the envelope was written by the workman.

17. It is common knowledge that Hand writing Experts is a specialised branch. Their cross-examination is required to be carried out by specialised person. The workman cannot be said to be a specialised person. No doubt, in his letters and in his submissions before the disciplinary authority and the appellate authority he had tried to give a picture how the hand writing expert is to be cross-examined. But it appears to me that it is only because he was consulting one Mr. Sawant Advocate from the beginning. That consultation depicted in his letters. He could not cross-examine the witnesses, more particularly the hand writing expert. His inability to do so is perfectly justified. No doubt, the procedure contemplates permission given by the bank for appointment of Advocate but in a peculiar circumstances when a worker was not in a position to get any help as contemplated under para 19.12 is certainly entitled to get the assistance from a Advocate. Not giving such permission is prejudiced to workman in the departmental inquiry and has to be said that this is against the principle of natural justice.

18. Mr. Shah, the learned Advocate for the management placed reliance on Harinarayan Singh vs. United Commercial Bank and another 1997 Lab. IC 2076. The facts of that case are quite different that the facts before me. Their Lordship while upholding the contentions of the bank came to the conclusion that the allegations in the charge sheet are very simple and they are not complicated and under such circumstances failure to permit the petitioner to engage an advocate cannot be said to be violative of the principle of natural justice. I find that it has no application to the present set of facts.

19. Both the learned advocates placed reliance on K. M. Bhatt vs. Regional Manager, Dena Bank and another 1998 I CLR 469. In that case the workman was not granted permission to engage a lawyer in a domestic inquiry. In the writ the lordship observed that a permission to represented by lawyer should be granted if by refusing such permission there is denial of reasonable opportunity to defend by delinquent. If it is not so, application to permission to engage a lawyer can be rejected. In absence of any prejudice at inquiry, inquiry cannot be vitiated merely on ground that delinquent was not permitted to appear through lawyer. Here, in this case the facts which I have narrated above clearly depicts that as the hand writ-

ing expert was to be cross-examined and the worker was not assisted by anybody, he was prejudiced. He could not defend his case properly. Therefore, he declined to participate in the inquiry. For the sake of argument it is said that even if he want to put some question to the Hand writing expert on his own, even then it could not have been said it is proper cross-examination. He was not given a reasonable opportunity to defend his case. His cross-examination of the Expert could not be justifiable for coming to a proper conclusion.

20. In *Adolfo Vaz vs. Bank of Baroda and others* 1993 II CLR 527 it is observed by their Lordship that the Bank permitted the workman to be represented by a representative of his union as per para 19.12 of the Bipartite settlement but refused to allow him to engage an advocate. In that case the union declined to render such services. Therefore, the Lordship observed that there was no difficulty in allowing the workman to engage the services of a lawyer and with this, it is open to the Bank to have a lawyer to represent the Bank before the Inquiry Officer. On the same ratio the bank should have allowed the workman to be represented through an advocate and could have engaged the advocate to represent him if found necessary. The ratio in that case is aptly applicable to the present set of facts.

21. There is another aspect of the matter. Bipartite settlement states that the Banks has to give permission to engage a lawyer. When the bank refuses such permission they had to give reasons for the same. When the workman tried to follow the earlier clauses but failed. Then it was rather more reasonable for the bank to give such a permission. But even if they decided to refuse it they should have given reasons for the same. They have not done so. I do not find any justification for their action to refusal to allow the workman to engage an advocate.

22. Mr. Shah the learned advocate for the management on going through the cross-examination of the workman and on the basis of the documents tried to bring on record that the workman is well versed and smart person. No prejudice is caused to him by not allowing him to engage an advocate. I do find that the worker is smart. His letters speaks that he is intelligent too but it does not mean that he is capable or cross-examining an hand writing expert. It is obviously an expert job. I, therefore, find that refusal to engage an advocate by the workman to defend him has caused prejudice to him resulting into conducting departmental inquiry against the principle of natural justice.

23. It is tried to argue on behalf of the workman that he was not supplied with the necessary documents at the time of the inquiry. His cross-examination clearly speaks that he was supplied with all photo copies of the documents which he asked for before the inquiry started. I do not find any merit in that contention.

24. One of the contention of the workman was that he wanted these originals namely unsigned letters and the envelope to be sent to his hand writing expert for getting the report. It is rightly argued on behalf of

the management that this being the original documents those could not be handed over to the workman. Then it was tried to argue on behalf of the workman that then how they were given to the complainant. It can be seen that the lady herself received that envelope alongwith the letter then with the permission of the Officer of the Bank she got admitted hand writing of the workman and got it examined through hand writing expert, Mr. Wagh. It does not mean the Bank handed over the originals to the complainant. I therefore, do not find any substance in the contentions raised on behalf of the workman.

25. It is also tried to argue that no personal hearing was given to the workman. The documents on record clearly speaks that he was given a personal hearing and there is no merit in that contention.

26. After coming to the conclusion that the domestic inquiry which was held against the workman is against the principle of natural justice. The evidence which is on record is to be said to be incorrect. Naturally the findings given by the inquiry officer is said to be perverse.

27. It can be further seen that Inquiry Officer had relied upon the hand writing expert report namely of Mr. Wagh. He was not examined by the management. Naturally he could not be cross-examined by the workman. It is therefore, relying on his report is not proper. For all these reasons, I record my findings on the points accordingly.

ORDER

1. The domestic inquiry which was held against the workman was against the principle of natural justice.
2. The findings of the inquiry officer are perverse.
3. The management is allowed to lead evidence to justify its action.

15th May, 1998

S. B. PANSE, Presiding Officer

नई दिल्ली, 29 मई, 1998

का.आ. 1272—श्रीयोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आई एयरवेज इंटरनेशनल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट श्रीयोगिक विवाद में केन्द्रीय सरकार श्रीयोगिक अधिकरण नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-5-98 को प्राप्त हुआ था।

[सं. एल-11012/34/96-आई आर (सी-I)]

प्रजय कुमार, अनुभाग अधिकारी

New Delhi, the 29th May, 1998

S.O. 1272.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Govt. Industrial Tribunal, New Delhi as shown in the Annexure in the Industrial Dispute between the employers in relation to

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
AT CALCUTTA

Reference No. 163 of 1988

PARTIES :

Employers in relation to the management of Bank of Baroda

AND

Their workmen.

PRESENT :

Mr. Justice A. K. Chakravarty, Presiding Officer.

APPEARANCES :

On behalf of Management—Mr. D. P. Bose, Manager (Personnel).

On behalf of Workmen—Mr. B. Chakravorty, President of the Union.

STATE : West Bengal

INDUSTRY : Banking

AWARD

By Order No. L-12012/247/88-D.II (A) dated 19th September, 1988 the Central Government in exercise of its powers under Section 10(1)(d) and (2-A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Bank of Baroda in terminating the services of S/Shri Uma Sankar Ghosh and Shiba Prasad Mondal is justified ? If not, to what relief are the concerned workmen entitled to ?"

2. The present dispute has arisen at the instance of the Bank of Baroda Employees' Union for termination of services of Shri Uma Sankar Ghosh and Shiba Prasad Mondal from the employment of the Bank of Baroda.

3. Union's case, as it appears from its written statement, is that the bank engaged/appointed Uma Sankar Ghosh as a Sweeper in the subordinate staff cadre and utilised his service as Sweeper of the Bank's branch at Lansdown Market from January, 1983 to October, 1983 i.e. for 141 days and thereafter at the Regional Inspection Centre from 2nd November, 1983 to 25th September, 1984 i.e. for 329 days. Similarly, Shiba Prasad Mondal after his appointment as Sweeper in the subordinate staff cadre worked as Sweeper at the Lochanpur Branch from 11-12-1984 to 26-8-1986 i.e. for a period of 760 days continuously and uninterruptedly. Respective Managers of the branches of the Bank in which the concerned workmen had worked, issued certificate in their favour acknowledging the period of service rendered by them. The Bank thereafter on 26-9-1984 retrenched/terminated the service of Uma Sankar Ghosh. Similarly, the service of Shiba Prasad Mondal was also terminated by the Bank on 27-8-1986. In both the cases, their services were terminated without service of any notice and without assigning any reason. The union has accordingly alleged that the provisions of Section 25-F of the Industrial Disputes Act, 1947 was not complied with while terminating their services. The union has further alleged that provisions of Section 25-H and 25-G were not also complied with, because the principle of last-come-first-go was not observed, nor any opportunity for reemployment was given to them even though vacancies had arisen subsequently and they had been filled-up by employing other persons. The union then raised an industrial dispute in respect of the aforesaid termination of services and the Assistant Labour Commissioner (Central), Calcutta having failed to effect any settlement in the matter, the matter was referred to the Central Government which referred the dispute to this Tribunal for adjudication. The union has prayed for reinstatement of the concerned workmen in their services with back wages.

4. Bank of Baroda, in its written statement, denied the allegations of the union that the concerned workmen were appointed against permanent vacancies. Its case is that to clean and sweep the Bank premises, the Bank requires the

services of casual sweepers when the permanent incumbents were on leave and/or absent from duty. To meet the exigencies, Bank prepared panels of casual sweepers stationed at various base branches in the city to enable such base branch to directly cater to the requirement of the branches as and when the permanent incumbents proceed on leave and/or are absent. These panels are made from amongst the candidates whose names have been sponsored through the local Employment Exchange. Uma Sankar Ghosh is such a candidate who had been working in different branches from time to time from 1983 to 1987 against leave vacancies of permanent incumbents. He, thus worked for number of days as a casual sweeper against casual vacancies under the circumstances mentioned above. Shiba Prasad Mondal also worked as casual sweeper for number of days against a vacancy at Bank's Lochanpur Branch in Murshidabad District. The branch being in rural area, facilities for empanelment of casuals were not possible. Shri Mondal got his chance to work as part time sweeper as a local man, although his name was not sponsored by the local Employment Exchange. The rural branches also having no facilities to contact base branch for casual sweepers, he had to be appointed time and again. The Bank also denied that they have violated any of the provisions of the Industrial Disputes Act, 1947. The Bank accordingly prayed for dismissal of the claim of the union.

5. The union has filed a rejoinder denying the allegation of the Bank that the concerned workmen were appointed as casual workmen. The rest of the allegations are merely repetition of the allegations made in its written statement.

6. The management has neither produced any document, nor examined any witness in this case. The union, on the other hand, examined both the concerned workmen namely, Uma Sankar Ghosh and Shiba Prasad Mondal. Uma Sankar Ghosh in his evidence stated that he worked for 141 days in Lansdown Branch and thereafter from 2-11-1983 to 25-9-1984 he was posted at Regional Inspection Centre. The total period of his work in 1983 and 1984 being thus 470 days. He was not cross examined on this point. He however, admitted that he was not given any appointment letter and that his name was not sponsored by the Employment Exchange. Similarly, Shiba Prasad Mondal in his evidence has stated that he was employed by the Manager of the Lochanpur Branch of Bank of Baroda as Sweeper and he worked for 760 days. It was not suggested to him in his cross-examination that he had not worked for 760 days. He, however, admitted that he was not given any appointment letter.

7. In support of its contention that Uma Sankar Ghosh had worked for 141 days, the union has produced a certificate, marked Ext. W-4, from which it will appear that the Manager of the said branch issued him a certificate acknowledging that he had put in 141 days of service in the said Branch. The other certificate is given by the Senior Manager of the Regional Inspection Centre of Bank of Baroda, vide Ext. W-5, from which it will appear that it acknowledges his work for 329 days in the said branch from 2-11-1983 to 25-9-1984. Similarly, the union has also produced the certificate issued by the Branch Manager of Lochanpur Branch of the Bank in favour of Shiba Prasad Mondal, vide Ext. W-9 acknowledging his continuous service without any break as casual sweeper for 422 days in the said branch. The union has also produced another certificate namely, Ext. W-10 of the Manager of the said branch acknowledging the period of his work to the said branch as 760 days.

8. The union, thus has successfully proved that the two concerned workmen had rendered service for more than 240 days in a year in their respective branches while they had been in the service of the Bank. It is no doubt true that they were not issued any appointment letter. From the evidence of the workmen as well as from the certificates there will hardly remain any doubt that they were not appointed against any permanent vacancy but they were only casual workers working continuously without any break for more than 240 days in a year. The question is whether the services of such casual workers can be terminated without service of any notice or payment of any compensation.

9. It is accordingly necessary now to examine the definition of the workman for an answer to the question whether casual employers can be said to be workmen. Under Section

2(s) of the Industrial Dispute Act, 1947 "Workman means any person (including an apprentice) employed in an industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, It is therefore clear from the above definition that casual workman is also a workman. The provisions of Chapter V-A in respect of retrenchment of such workman shall accordingly be applicable in this case.

10. The union has challenged the termination of services of the workman for non-compliance of the provisions of Section 25-F of the Industrial Disputes Act, 1947. I have already stated that there is sufficient materials on record to prove that each of the workman had rendered more than 240 days of continuous service in a year in the employment of the Bank. Under Section 25-F, one month's notice and retrenchment compensation is to be paid to the workman before termination of his service, which admittedly, was not done in this case. While dealing with 'retrenchment' as defined in Section 2(oo) of the Industrial Disputes Act, 1947 the Hon'ble Supreme Court in the case of State Bank of India v. N. Sundara Money, reported in AIR 1976 SC 1111 has held that the definition is comprehensive enough to admit all types of retrenchment and in such cases compliance of the conditions of Section 25-F of the Industrial Disputes Act, 1947 are mandatory. In the case of L. Robert D'Souza v. Executive Engineer, Southern Railway, reported in 1982 (1) LLJ 330 it was held by the Hon'ble Supreme Court that casual/duly-rated workman is a good as a workman and Section 25-F of the Act will apply in their cases too. The only condition is that they are to put in requisite number of days service to attract the provisions of Section 25-F of the Industrial Disputes Act, 1947. In Delhi Cloth and General Mills v. Shambhu Nath Mukherji, reported in AIR 1978 SC 8 it was held by the Hon'ble Supreme Court that the effect of non-compliance of clauses (a) and (b) of Section 25-F of the Industrial Disputes Act, 1947 would make the retrenchment invalid and illegal.

11. The management of Bank of Baroda, therefore, having not complied with the provisions of Section 25-F of the Industrial Disputes Act, 1947 in terminating the services of the two concerned workmen, acted illegally. That rendered the termination/retrenchment of services of the concerned workmen void. The Hon'ble Supreme Court in the case of Mohan Lal v. Management of Bank of Baroda, reported in 1981 Labt. I.C. 806 held that an invalid retrenchment does not being about a cessation of service. The Hon'ble Supreme Court also in the case of Union of India v. Sri Babu Ram Lala, reported in AIR 1988 SC 344 held that when the order of termination was declared void, the workman is entitled to back wages as if he continued in such service.

12. So, upon consideration of the facts and the position of law in the matter, I am of the opinion that the management of Bank of Baroda was not justified in terminating the services of Uma Sankar Ghosh and Shiba Prasad Mondal. They shall accordingly be entitled to be reinstated in service as casual sweepers and they shall also be entitled to the back wages from the date of termination of their respective services till their reinstatement.

This is my Award.

Dated, Calcutta,
The 14th May, 1998

A. K. CHAKRAVARTY, Presiding Officer.

नई दिल्ली, 8 जून, 1998

का. आ. 1275:—श्रीद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार में बी. सी. मी. एल. के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनबंध में निर्दिष्ट श्रीद्योगिक विवाद में केन्द्रीय सरकार श्रीद्योगिक अधिकरण (सं.-2) धनवाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-6-98 को प्राप्त हुआ था।

[सं. एल.-20012/118/92—आई आर (सी-1)]
अजय कुमार, प्रनुभाग अधिकारी

New Delhi, the 8th June, 1998

S.O. 1275.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, (No. 2), Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. B.C.C.L. and their workmen, which was received by the Central Government on 8-6-1998.

[No. L-20012/118/92-IR (C-I)]

AJAY KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD PRESENT :

Shri B. B. Chatterjee, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act, 1947.

REFERENCE NO. 15 OF 1993

PARTIES :

Employers in relation to the management of Loharpatti Colliery of M/s. B.C.C.L. and their workmen.

APPEARANCES :

On behalf of the workmen : Shri D. Mukherjee, Advocate.

On behalf of the employers : Shri B. Joshi, Advocate.

STATE : Bihar. INDUSTRY : Coal.

Dated, Dhanbad, the 25th May, 1998

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012(118)/92-I.R.(Coal-I), dated, the 17th March, 1993.

SCHEDULE

"Whether the action of the management of Mohuda Area of M/s. B.C.C.L. Dhanbad in stopping S/Shri Raj Kumar and 47 other Miners/Loaders from their duties (as per annexure) is legal and justified ? If not, to what relief are the concerned workmen entitled to ?"

2. The concerned workmen S/Shri Raj Kumar and 47 others as per list attached to the reference have made out a case in their W.S. that they were worker as Wagon Loader at Murulidih Colliery since long to the satisfaction of the management. The nature of job was permanent and the concerned workmen were working against permanent vacancy of wagon loaders. The management was in need of Miner/Loaders and directed the concerned workmen with other numbering 80 to report at Lohapatti Colliery for working there as Miner/Loader by their Office order

No. GM:MA:PD:O:G 178 dated 28-3-1978. Such direction of the management to the concerned workmen was in fact an order of transfer and in pursuance of such order the concerned workmen reported at Lohapatti Colliery out of 80 workmen so transferred only 32 were permitted to resume their duty at Lohapatti Colliery when the concerned workmen of this reference were refused on the ground that they did not possess identity card. In fact, the management did not issue any I.D. card to the concerned workmen on the ground that they were delisted casual workers. The concerned workmen represented before the management at Lohapatti Colliery that their identity should be verified with the management of Murulidih Colliery and they also reported the fact of refusal of Lohapatti Colliery management to resume duty of the concerned workmen. The management of Murulidih Colliery assured the concerned workmen to look into the matter and directed them to wait for sometime. The concerned workmen have also made out a case that there was a condition of the transfer order to the effect that the work or performance of the workmen as miner/loader would be watched for a period of 3 months from 29-3-1978 to 29-6-1978 and in fact if their job was found to be not satisfactory in that case the management of Murulidih Colliery would have the right to recall the order of transfer and to allow the concerned workmen to work at Murulidih Colliery in their respective job before transfer. The concerned workmen represented before the management of Lohapatti Colliery and Murulidih Colliery and even the Area Office regarding the sorry state of affairs and although the management assured that positive steps to be taken the concerned workmen were not allowed to resume the duty by the management either at Murulidih Colliery or at Lohapatti Colliery and that too without assigning any reason. Finding no other alternative the concerned workmen raised an industrial dispute before the ALC(C), Dhanbad. Attempt for conciliation made but the same ended in failure. The Govt. of India, Ministry of Labour without appreciating the legal position rejected the dispute and thereby reference to the Tribunal for adjudication. The union challenged the decision of the Ministry before the Hon'ble High Court, Patna at Ranchi Bench which was numbered as C.W.J.C. No. 1648/91(R) and the Hon'ble Court by their Order dated 21-8-1991 directed the union to file fresh representation before the appropriate authority. The Union thereafter again raised industrial dispute before the ALC(C), Dhanbad but this time also to no purpose and the Govt. of India, Ministry of Labour was pleased to refer the dispute for adjudication by the Industrial Tribunal. It is also the case of the concerned workmen that the action of Mohuda Area of M/s. BCCL in stopping Rai Kumar and 41 others from their duty was neither legal nor justified and rather the same was unjustified, arbitrary and against the standing orders and principles of natural justice for which the concerned workmen have prayed for answering the reference in their favour by an Award directing the management to reinstate the concerned workmen with full back wages. The matter having received from the Govt. of India the present reference case has been registered.

3. The management by filing a W.S.-cum-rejoinder have challenged the maintainability as well as legality of the reference by denying existence of employer and employee relationship between the management and

the concerned persons. Further case of the management is that the sponsoring union made a complaint dt. 25-11-1987 to the ALC(C), Dhanbad that Shri Raj Kumar and 47 others as named in the list attached to the complaint petition employed as casual wagon loaders at Murulidih Colliery 20/21 Pits since before nationalisation and they were stopped by the management sometimes in the year 1976. The union asserted in their complaint petition that the management agreed to give them employment as Miner/Loader. It was also the assertion of the union that the management issued an office order dt. 28-3-1978 giving the aforesaid casual wagon loaders job of Miner/Loader at Lohapatti Colliery and that the concerned workmen were not allowed to join their duties at Lohapatti Colliery as Miner/Loader. From the very letter of the complaint it is clear that the concerned persons never worked as Miner/Loader at any point of time and the present reference describing the persons as Miner/Loader is invalid and the reference is not therefore maintainable. The management has also made out a case that all the casual wagon loaders working in a colliery were issued identity cards containing the brief words C.W.L. In the Form B Registers maintained under Section 48 of the Mines Act, 1952 read with Rule 77 of the Mines Rules mentioning therein the names and particulars of employment of all casual wagon loaders will be available. Such workers were made members of the C.M.P.F. and contribution towards C.M.P.F. used to be realised from their wages. The concerned persons failed to submit any paper relating to their employment, CMPF Account No., I.D. Card, Bonus Card etc. The management have claimed in their W.S. that in course of conciliation proceeding it transpires that the concerned persons were not genuine casual loader/Miners working at 20/21 Pits Colliery and the sponsoring union has sponsored this case solely for the purpose of inducting strangers into employment of the management. The case of the concerned persons related to 10 years old at the time of making complaint in the later part of 1987. The material details relating to their employment were sought from the sponsoring union for verification of the C.M.P.F. Record in the office as well as for searching for old records of 1973 to 1978. The sponsoring union failed to produce any record in support of its claim and consequently the Conciliation Officer did not find any merit in the case and submitted a failure report to the Ministry for which the Ministry refused to make reference for adjudication on the basis of the demand of the sponsoring union in respect of the concerned persons. Then again the management in their W.S. has stated that casual wagon loaders were those categories of workmen who used to be provided wagon loading job as and when available and that in the year 1973 to 1976 due to erratic supply of wagon casual wagon loaders could hardly be employed 5 to 6 days in a month or 50 to 60 days in a calendar year. The casual wagon loaders were workers of such type who used to get employment in other place. They had no obligation to report to the management for work of wagon loading on each and every day. The management also had no authority to take any disciplinary action against any such worker in case of their unauthorised absence but the sponsoring union being encouraged by the order of the Central Govt, refusing to make

reference to an Industrial Tribunal for adjudication relating to the concerned persons fabricated certain documents purported to be the order of transfer contained the names of the concerned persons as well as others and made out a case of discrimination by the management. The sponsoring union in Writ Petition filed by it before the Hon'ble High Court prayed for issuance of direction to the Central Govt. for making a reference to the Central Govt. Industrial Tribunal but the Hon'ble High Court was pleased to direct the sponsoring union for submitting a fresh representation. The demand of the union in its letter of complaint for providing employment to the concerned persons as Miner/Loader in Lohapatti Colliery or in any other colliery of M/s. BCCL being inconsistent with the contents of the complaint made by the sponsoring union before the ALC(C), Dhanbad, the present reference is liable to be rejected summarily on that ground alone. In addition it is also the case of the management that the present reference is vague and indefinite in as much as it has nowhere been mentioned the date from which the concerned persons were working as casual wagon loader or from the date from which they were stopped from working. As such, naturally the management on all these grounds has prayed for an order to the effect that the concerned persons are not entitled to any relief and thereby to answer the reference in affirmative against the concerned persons.

4. In the rejoinder the management has denied the contents of each and every para of the W.S. submitted on the side of the concerned workmen including performance of their duties since long to the satisfaction of the management, working of the concerned workmen against permanent vacancies of wagon loaders, their transfer to Lohapatti Colliery for work as Miner/loader in such letter of transfer dt. 28-3-78, refusal of the Lohapatti Colliery management to any of the concerned workman to perform their duties as Miner/loader etc. and in the concluding part of the rejoinder has prayed for that the Tribunal may be pleased to pass an Award holding that the concerned persons are not entitled to any relief.

5. The concerned workmen have also filed a rejoinder in reply to the W.S.-cum-rejoinder filed by the employer wherein the concerned workmen have denied the contents of each and every para of the W.S. so far the question of legality and maintainability of the reference, employer and employee relationship between the management and the concerned workmen etc. are concerned and have also put forward the claim to the effect that the concerned workmen were working in permanent capacity in the job of permanent nature although designated as delisted casual worker for which the concerned workmen in view of the standing order and circular are entitled to be absorbed permanently. The claim of the management that the concerned workmen were not genuine casual wagon loader is not only false frivolous and motivated but such statement made by the management in their W.S. is also unfortunate. The concerned workmen in the rejoinder have also claimed that the Ministry of Labour, Government of India failed to appreciate the implication as to the nature of the dispute for which Ministry rejected to refer the dispute to the Tribunal for adjudication compelling the concerned

workmen to move the Hon'ble High Court and ultimately on the basis of the direction issued by the Hon'ble High Court the matter has been referred to this Tribunal. The concerned workmen are entitled to the relief by way of reinstatement with full back wages. Then again the workmen have also claimed in their rejoinder that the work of casual wagon loader or the nature of the job of miner/loader is in fact not casual in nature rather the nature of the job is permanent and the claim of the management about the erratic supply of wagon during the year 1973-76 etc. are not only false and baseless with a view to deprive the concerned workmen of being regulated but motivated too. Similarly the claim of the management that the concerned workmen as casual wagon loader hardly used to be employed for 5 to 6 days in particular month and that they were under no obligation to report regularly to the management for work on casual wagon loader and they had right to accept the employment elsewhere at their own choice without obtaining any permission or intimation to the management etc. are all false baseless and motivated. The concerned workmen have also denied the contents of para-15 of the W.S. filed by the management and the claim of the management in para-18 that the reference suffers from the defect of vagueness and indefiniteness etc. for which they ultimately prayed that the concerned workmen are entitled to the relief prayed for and thereby for an order to reinstatement with full back wages.

DECISIONS AND REASONS

6. Both parties have adduced oral evidence in support of their respective cases. The management has examined two witnesses namely Shovan Ram who has posed himself as MW-1 and another named D.B. Singh as MW-2 whereas two witnesses have also been examined on the side of the concerned workmen. They are Anwar Hussain, WW-1 and Daula Mian WW-2. In addition the concerned workmen have also proved certain documents and admitted in evidence such as letter dt. 14-11-90 vide Ext. W-1, certain signature thereon vide Ext. W-2, settlement petition in Ref. Case bearing No. 266/87 dt. 22-9-1991 vide Ext. W-2/1 and copy of the order said to be an office order dt. 28-3-1978 vide Ext. W-3.

7. In the instant reference case the point for adjudication is whether the concerned workmen Rajkumar and 47 others are entitled to any relief and whether the action of the management in stopping them to work as Miner/Loader was legal and justified. The evidence adduced on the side of the respective parties by examining two witnesses on each are on extreme opposite poles. The evidence of MW-1 who is Dy. Personnel Manager under BCCL has claimed during his examination that he was in Mohuda Area since 1975. He worked in the area office and also in different mines of that area. The witness has claimed that he checked Form B Register of Murulidih Colliery and during such checking he did not find the name of any of the concerned workman. The witness has produced photo copy of the Form B Register marked as Ext. M-1. It is also the claim of the witness that in case of permanent workers Identity Cards are issued and such cards are also issued even to the

casual workers with the endorsement therein "casual" and that he did not find the name of any of the concerned workmen if worked at any point of time in any colliery, for which no C.M.P.F. was allotted to any of them. The witness stood cross-examined at length on the side of the concerned workman in course of which the witness admitted that some workers were transferred from Murulidih Colliery etc. In fact nothing came out from his lips during such cross-examination if any of the concerned workmen were included in such order of transfer from Murulidih colliery to any other colliery and in the instant case to Lohapatty Colliery. The evidence of this witness thus to some extent shows that in fact as per office record the name of any of the concerned workman were not there showing any of them working as casual or even delisted casual wagon loader of miner/loader. Almost similar is the evidence of MW-2 D. B. Singh who is Chief Personnel Manager and was attached to Murulidih Area from April, 1986 to December, 1990. During his examination the witness has claimed that he was acquainted with the signature of G.M. and as per his statement the document filed by the workman bearing No. GM: MA: PD: O: O: 78.709.45 having a caption Murulidih 20/21 Pits Colliery, P.O. Mohuda, Dist. Dhanbad dt. 28-5-1978 purported to be an office order including therein the names of 80 persons is in fact not signed by any Officer of Murulidih and thereby the witness has claimed that the said order is not at all a genuine one in as much as it is impossible to conceive that a copy of the order issued by the G.M. would be endorsed to the G.M. for keeping in the official file. So many questions were put to the witness in the cross-examination with a view to prove genuineness of the said order but in fact to no purpose. On the other hand oral evidence adduced on the side of the workmen by WW-1 Anwar Hussain is that he is one of the concerned workman and that he knows all other workmen of this reference for which the witness deposed on their behalf as well. The claim of the witness is that he as other workmen were absorbed in Murulidih Colliery as delisted casual workers but they were not supplied with any I.D. Card or even pay slip. At the same time the witness has claimed that from Murulidih Colliery they were transferred to Lohapatty Colliery. The witness and all other concerned workmen numbering 80 reported at Lohapatty Colliery but out of 80 number of workers only 32 were permitted to join there but the rest were not including one Jalaluddin who was also subsequently absorbed in a colliery by way of settlement with the management. This is the sum and substance of the evidence of this witness during his examination-in-chief. During cross-examination the witness admitted that he did not know if he got any paper like C.M.P.F. or I.D. Card for the purpose of showing that he ever served anywhere under BCCL. The witness has also admitted like that of him other workers of this reference have also got no I.D. Card or C.M.P.F. number or received any appointment letter showing their appointment for working as casual or delisted casual wagon loader at any point of time in Murulidih Colliery. Save and except a paper showing their transfer to Lohapatty Colliery the genuineness of which has been challenged by the MWs examined on

the side of the management. The witness however claimed during cross-examination that when he as well as other workmen were not permitted to join at Lohapatty Colliery they agitated the matter before the RLC(C) but except that they never filed any paper or complaint to any authority for not permitting them to join at Lohapatty colliery, why? There is no explanation. A specific question was put to the witness to the effect whether he lodged any complaint for not allotment of any C.M.P.F. Number for self and other workmen before any authority but the witness without giving the answer to the question remained silent. This is a circumstance which tell adverse against the claim of the witness and the concerned workmen of their working as delisted casual wagon loaders at any point of time at Murulidih or transfer to Lohapatty Colliery for working as Miner/Loader. The next witness is Daula Mian Zonal Secretary of the union at whose instance the present reference case was started. The witness has claimed that he knew all the concerned workmen and that he agitated the claim of the concerned workmen before the ALC(C) because of the fact that all the concerned workmen used to serve as delisted casual wagon loader at Murulidih colliery. As per claim of this witness the BCCL authority never permitted any such casual wagon loader of delisted casual workers as number of C.M.P.F. Save and except the verbal statement of this witness there is no paper to show that the authority of BCCL never issued any C.M.P.F. number to any such worker of delisted casual wagon loader even in case of their regular appointment as such. In concluding part of the cross-examination of this witness he admitted that he is a dismissed employee of BCCL although he denied the suggestion that as he is in enmical term with the management of BCCL a number of cases have been started at his instance by way of reference like that of the present reference although during cross-examination he has denied that Ext. W-3 i.e. the office order of alleged transfer of 80 workmen to Lohapatty Colliery is manufactured one. The discussion of the oral evidence made above clearly shows that in fact the oral evidence adduced by the respective parties of their respective cases are on extreme opposite poles. Learned Advocate on the side of the concerned workmen tried to submit that since Ext. W-3 is a document containing the names of the concerned workman as transferred workmen from Murulidih Colliery to Lohapatty Colliery and since the original though called for, has not been produced, an adverse inference as against the management should be drawn and as the evidence of WW-1 and WW-2 are sufficient to show that the concerned workmen of this reference worked as delisted casual wagon loader for a considerable period there should be an order for reinstatement in their favour with a direction for payment of full back wages although there was delay in raising the dispute but since under the I.D. Act there is no question of any limitation such delay cannot be treated as a good ground for refusal of the relief to the concerned workmen. For that purpose learned Advocate has relied upon number of decisions including 1991 Lab I.C. page 633 and another of Hon'ble Supreme Court reported in AIR 1968 SC page 280. On the other hand Learned Advocate on the side of the management drawing my attention to the point of reference and to the evidence of WW-1

and WW-2 submitted that the point of reference shows as if the concerned workmen were stopped from working by the management as Miner/Loader but as per claim of WW-1 and WW-2 none of the concerned workmen have ever worked as Miner/Loader and as per their claim in fact the concerned workmen allegedly working as delisted casual wagon loader. In that view of the matter it was submitted by the learned Advocate for the management the present reference suffers from defect of vagueness and indefiniteness for which it is not legally maintainable. The reference is therefore liable to be answered accordingly with a finding to the effect that the concerned workmen are not entitled to any relief as the management in fact never had any scope from stopping any of the concerned workmen from their duties as Miner/Loader. It was also submitted by the Learned Advocate on the side of the management that admittedly there was delay in raising the dispute for atleast 10 years and there is no explanation as to what prevented the concerned workmen for remaining silent for such a long period even in case if it is taken for granted that the alleged office order Ext. W-3 is genuine for argument sake in that view of the matter when there is no explanation for the delay in raising the dispute the present reference must fail. It is true that there is no specific provision prescribed the period of limitation in raising industrial dispute under I.D. Act. But even in the absence of any such provision it is now well settled that a dispute under the I. D. Act should be raised without least possible delay which has not been done in the instant case. The question of drawing adverse presumption for non-production of original of Ext. W-3 by the management as submitted on the side of the workmen is also not of much help to the workmen in the instant case specially when the management has challenged the genuineness of the document and careful perusal of the said document shows that it is unexpected that an authority like G.M. issuing an office order and in the instant of order of transfer of certain workers will endorse a copy to himself. This is a circumstance which throws doubt as to the correctness and genuineness of the document Ext. W-3 and under such circumstances I am unable to place any reliance upon that document and since save and except that there is nothing on record except the oral evidence of WW-1 and WW-2 that any of the concerned workman have ever worked even as delisted casual wagon loader under BCCL at Murudih Colliery at any point of time I am unable to hold that the concerned workmen are entitled to a favourable order for reinstatement with full back wages and thereby to the relief prayed for. Since the question of stopping of any workmen by the management of BCCL from their work as miner/loader cannot arise in view of the claim of W.W. 1 and W.W. 2 there is no scope to pass any specific order on that point by way of adjudication. The result is that the present reference case fails. The concerned workmen Rajkumar and 47 others are not entitled to any relief.

This is my Award.

B. B. CHATTERJEE, Presiding Officer

ANNEXURE

1. Sri Raj Kumar.
2. Sri Sakur Ansari.

3. Sri Nasuruddin Mian.
4. Sri Bhola Rewani.
5. Sri Suleman Mian.
6. Sri Muslim Ansari.
7. Sri Deo Narayan Mahato.
8. Sri Badri Nath Mahato.
9. Sri Naresh Thakur.
10. Sri Surender Kumar Sharma.
11. Sri Sita Ram Singh.
12. Sri Bijay Singh.
13. Sri Santa Roy.
14. Sri Liaqat Khan.
15. Sri Choota Gope.
16. Sri Ramtahal Gope.
17. Sri Dinesh Yadav.
18. Sri Barhu Thakur.
19. Sri Badri Gope.
20. Sri Hafi Khan.
21. Sri Chhutan Rawani.
22. Sri Muktar Khan.
23. Sri Mohan Rawani.
24. Sri Rehmat Ali Khan.
25. Sri Rup Basant Singh.
26. Sri Kedar Pandey.
27. Sri Umesh Pandey.
28. Sri Chhota Bhola Kumhar.
29. Sri Sukdeo Gope.
30. Sri Barju Thakur.
31. Sri Mritunjay Pd. Mahato.
32. Sri Anand Pandey.
33. Sri Asgar Khan.
34. Sri Biswanath Mahato.
35. Sri Anwar Hussain.
36. Sri Kayum Ansari.
37. Sri Asraph Khan.
38. Sri Harendra Pd. Mahato.
39. Sri Prafulla Kumar Mahato.
40. Sri Sarju Thakur.
41. Sri Shyama Dushadh.
42. Sri Madan Mian.
43. Sri Bhajahari Mahato.
44. Sri Sarbeshwar Mahato.
45. Sri Madhusudan Mahato.
46. Sri Tapan Kumar Mahato.
47. Sri Sitaram Mahato.
48. Sri Dipnarayan Mahato.

नई दिल्ली, 8 जून, 1998

का. आ. 1276 :—श्रौद्धोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आलोक हॉर्ड कोक के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट श्रौद्धोगिक विवाद में केन्द्रीय सरकार श्रौद्धोगिक अधिकरण (सं. 2), धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-6-98 को प्राप्त हुआ था।

[सं. एल.-20012/365/95-आई आर (सी-I)]

अजय कुमार, अनुभाग अधिकारी

New Delhi, the 8th June, 1998

S.O. 1276.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, (No. 2) Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Alok Industrial Hard Coke and their workman, which was received by the Central Government on 8-6-1998.

[No. L-20012/365/95-IR. (C-I)]
AJAY KUMAR, Section Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri B. B. Chatterjee, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) and sub-section 2(k) of the I. D. Act, 1947.

REFERENCE NO. 129 OF 1996.

PARTIES :

Employers in relation to the management of Alok Industrial Hard Coke, and their workmen.

APPEARANCES :

On behalf of the Workmen : None.

On behalf of the Employers : Shri Adhir Kumar Mukherjee, authorised representative.

STATE : Bihar. INDUSTRY : Hard Coke.

Dated. Dhanbad, the 26th May, 1998.

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) and sub-section 2(k) of the I. D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/(365)/95-IR. (Coal-I), dated the 1st November, 1996.

THE SCHEDULE

"Whether the demand by the Union for reinstatement of S/Shri Harak Lal and Har-dhan Kumbhkar by the management of Alok Industrial Hard Coke is legal and justified ? If so, to what relief are these workmen entitled ?"

2. Soon after the receipt of the order of reference notices were duly served upon the parties. But only the management made their appearance through their authorised representative. Thereafter the case proceeded along with its course. Subsequently when the case was fixed, learned representative of the management Shri Adhir Kumar Mukherjee appeared before me and filed two petitions along with two affidavit under the signature/LTI of the concerned workmen stating therein that the workman concerned have since received a lump sum amount being their due wages and other benefits in full and final settlement of the dispute involved in his reference and as such he prayed for passing a 'No dispute' Award. Perused the two petitions and the two affidavits under the signature/LTI of the concerned workmen also heard Shri Mukherjee, learned representative of the management and I am of the opinion that since the concerned workmen have received their dues wages and other benefits, naturally, inspite of the issuance of notices to them, the concerned workmen abstained from appearing before this Tribunal to press their claim. In the facts and circumstances, I have no other alternative but to pass a "No dispute" Award in this reference, do order accordingly.

B. B. CHATTERJEE, Presiding Officer.

नई दिल्ली, 9 जून, 1998

का. आ. 1277 :—श्रौद्धोगिक विवाद अधिनियम, 1948 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. बी. सी. सी. एल. के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट श्रौद्धोगिक विवाद में केन्द्रीय सरकार श्रौद्धोगिक अधिकरण (सं. 2), धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-6-98 को प्राप्त हुआ था।

[सं. एल.-20012/357/90-आई आर (सी-I)]

अजय कुमार, अनुभाग अधिकारी

New Delhi, the 9th June, 1998.

S.O. 1277.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, (No. 2), Dhanbad as shown in the Annexure in the industrial Dispute between the employers in relation to the management of M/s. B.C.C.L. and their workman, which was received by the Central Government on 9-6-1998.

[No. L-20012/357/90-IR. (C-I)]
AJAY KUMAR, Section Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2) AT
DHANBAD

PRESENT :

Shri B. B. Chatterjee, Presiding Officer.

In the matter of an Industrial Dispute under
Section 10(1)(d) and sub-section 2(k) of
the I. D. Act, 1947.

REFERENCE NO. 63 OF 1991

PARTIES :

Employers in relation to the management of
Moonidih Project of M/s. B.C.C.L. and
their workmen.

APPEARANCES :

On behalf of the workmen : None.

On behalf of the employers : None.

STATE : Bihar. INDUSTRY : Coal.
Dhanbad, the 28th May, 1998

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) sub-section 2(k) of the I. D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/ (357)/90-I. R. (Coal-I), dated, the 21st March, 1991.

THE SCHEDULE

"Whether the action of the management of Moonidih Project under Moonidih Area of M/s. B.C.C. Ltd., in superannuating Shri Samar Mahto T. No. 1747 w.e.f. 31-1-90 is justified ? If not, what relief the workman is entitled ?"

2. Soon after the receipt of the order of reference notices were duly served upon the parties. But none of the parties appeared nor took any steps. Then again notices were issued to them but inspite of the issuance of notices they abstained from appearing before this Tribunal. It therefore leads me to an inference that presently there is no dispute existing between the parties. In the circumstances I have no other alternative but to pass a 'No dispute' Award in the reference.

B. B. CHATTERJEE, Presiding Officer

नई दिल्ली, 9 जून, 1998

का. अ. 1278.—श्रोतोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. बी. सी. सी. एल. के प्रबन्धताल के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट श्रोतोगिक विवाद में केन्द्रीय सरकार श्रोतोगिक अधिकारण (सं. 2), धनबाद के पंचाट को प्रकाशित करती

है, जो केन्द्रीय सरकार को 9-6-98 को प्राप्त हुआ था।

[सं. एल. 20012/105/92-आईआर (सी-1)]

प्रजय कुमार, अनुभाग अधिकारी

New Delhi, the 9th June, 1998

S.O. 1278.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, (No. 2), Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. B.C.C.L. and their workman, which was received by the Central Government on 9-6-1998.

[No. L-20012/105/92-IR (C-I)]
AJAY KUMAR, Section Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO 2) AT
DHANBAD

PRESENT :

Shri B. B. Chatterjee, Presiding Officer.

In the matter of an Industrial Dispute under
Section 10(1)(d) and Sub-section 2(k) of
the I. D. Act, 1947.

REFERENCE NO. 25 OF 1993.

PARTIES :

Employers in relation to the management of Gopalichak Colliery of M/s. B.C.C.L. and
their workmen.

APPEARANCES :

On behalf of the workmen : None.

On behalf of the employers : None.

STATE : Bihar. INDUSTRY : Coal.

Dhanbad, the 29th May, 1998

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d), sub-section 2(k) of the I. D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their order No. L-20012/ (105)/92-I. R. (Coal-I), dated, the 22nd March, 1993.

THE SCHEDULE

"Whether the action of the management of Gopalichak Colliery in denying promotion to Shri Khusila Thakur, Line Mistry from Cat. IV to Cat. V is justified ? If not, to what relief the workman is entitled for ?"

2. Soon after the receipt of the order of reference notices were duly served upon the parties. But none of the parties appeared nor took any steps.

Then again notices were issued to them but inspite of the issuance of notices they abstained from appearing before this Tribunal. It therefore leads me to an inference that presently there is no dispute existing between the parties. In the circumstances I have no other alternative but to pass a 'No dispute' Award in this reference.

B. B. CHATTERJEE, Presiding Officer

नई दिल्ली, 10 जून, 1998

का. आ. 1279.—श्रोतोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भी, टिस्को के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट श्रोतोगिक विवाद में केन्द्रीय सरकार श्रोतोगिक अधिकरण (सं.-1), धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-6-98 को प्राप्त हुआ था।

[सं. एल.-20012/52/96-आई आर (सी-1)]

अजय कुमार, अनुभाग अधिकारी

New Delhi, the 10th June, 1998.

S.O. 1279.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal (No 1), Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. TISCO and their workman, which was received by the Central Government on 10-6-1998.

[No. L-20012/52/96-IR (C-I)]
AJAY KUMAR, Section Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1) AT DHANBAD

PRESENT :

Shri B. B. Chatterjee, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) and Sub-section 2(k) of the I. D. Act, 1947.

REFERENCE NO. 87 OF 1997.

PARTIES :

Employers in relation to the management of West Bokaro Colliery of M/s. Tisco. Ltd., Hazaribagh and their workman.

APPEARANCES :

On behalf of the workmen : Shri K. Chakraborty, Advocate.

On behalf of the employers : None.

STATE : Bihar.

INDUSTRY : Coal.

Dated, Dhanbad, the 26th May, 1998.

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) and Sub-section 2(k) of the I. D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/52/96-IR (C-I), dated, the 8th April, 1997.

SCHEDULE

"Whether the action of the management of West Bokaro Colliery of M/s. TISCO, Ltd., Hazaribagh in dismissing Shri Manoj Kumar Singh, Sr. Peon from the services of the Company w.e.f. 10-3-1994 is justified ? If not, to what relief is the workman entitled ?"

2. The concerned workman Shri Manoj Kumar Singh by a petition along with an affidavit and photo copy of the photograph duly attested prays for passing an order of 'No dispute' on the ground mentioned therein. Perused the application, affidavit, the photo copy of the photograph etc. Heard Learned Advocate for the workman. When the workman concerned himself is not interested in the dispute and in writing prays for disposal of the reference by an order of 'No dispute' I cannot but hold that at present no industrial dispute exists between the concerned workman and the management. The inevitable result is, therefore, to pass an Award in terms of the prayer of the concerned workman for a 'No dispute' Award and I do order accordingly.

B. B. CHATTERJEE, Presiding Officer

नई दिल्ली, 2 जून, 1998

का. आ. 1280.—श्रोतोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इन्टरनेशनल एयर पोर्ट अपोर्टी आफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट श्रोतोगिक विवाद में केन्द्रीय सरकार श्रोतोगिक अधिकरण, नई दिल्ली के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-6-97 को प्राप्त हुआ था।

[सं. एल-11012/24/87-डी-II (बी)]

बी० एम० डेविड, डेस्क अधिकारी

New Delhi, the 2nd June, 1998

S.O. 1280.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of International Airport Authority of India and their workman, which was received by the Central Government on 2-6-98.

[No. L-11012/24/87-D-II (B)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI
I.D. No. 110/88

In the matter of dispute :

BETWEEN

Shri Narotam Gaur,
H. No. 81, Vasant Gaon,
New Delhi.

Versus

The management of M/s. International Airport Authority of India, Indira Gandhi International Airport, Palam, New Delhi.

APPEARANCES :

None--for the workman

R. S. Dalal—for the management

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-1/1012/24/87-D-II (B), dated 13-10-1988 has referred the following industrial dispute to this Tribunal for adjudication :—

"Whether the action of the management of International Airport Authority of India in terminating the services of Shri Narotam Gaur, pump operator w.e.f. 1-1-84 is justified? If not, to what relief the workman is entitled?"

2. Narotam Gaur the workman in this case has alleged that he was appointed as a Pump Operator on 14-6-83 on daily wage basis for Rs. 12.40 p. per day. He continuously worked as such till 29-2-84. On that day he was refused duty. No notice, retrenchment compensation or notice pay was given to him at the time of his termination and the management had followed provisions of Section 25-F of the I.D. Act. The person junior to him were still working with the management after his termination as he was also entitled to be reinstated with full back wages and continuity his service.

3. The management in its written statement alleged that the workman was employed on daily wages in view of the work load and he had not completed 240 days continuous service with the management. The provisions of the I.D. Act were attracted as he was not eligible to be regularised.

4. Narotam Gaur himself appeared as W. W. 1 while the management examined one H. S. Bains MW1.

5. I have heard representatives for the parties and have gone through the record.

6. The only point to be considered in this case was as to whether the workman had completed 240 days continuous service with the management or not. Both the representatives of the parties have agreed that the calculation of days could be made from the muster roll photo copies of which are on record. I have gone through the record and the following is the chart indicating the number of days worked by the workman during the relevant period :

“14-6-83 to 13-7-83	26 days
14-7-83 to 13-8-83	27 days
14-8-83 to 13-9-83	26 days
14-9-83 to 13-10-83	26 days
14-10-83 to 23-10-83	8 days
24-10-83 to 33-11-83	27 days
24-11-83 to 30-11-83	6 days
12/83	27 days
1/84	26 days
2/84	25 days
	224 days"

The total number of working days comes to 224 including holidays and Sundays.

7. In view of circumstances, the workman was proved to have worked for 224 days he was not entitled to be regularised against a regular post. The action of the management in terminating his services was, therefore, justified. Parties are, however, left to bear their own costs.
13-5-1998.

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 8 जून, 1998

का.आ. 1281.—श्रीद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दामोदर सीमेंट पाण्ड मलांग नि. के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट श्रीद्योगिक विवाद में केन्द्रीय सरकार श्रीद्योगिक अधिकारण, कलकत्ता के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-6-98 को प्राप्त हुआ था।

[सं. एन-29011/32/92-श्राव आर (विविध)]

बी.एम. डेविड, ईम्स अधिकारी

New Delhi, the 8th June, 1998

S.O. 1281.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Damodhar Cement and Slag

Ltd., and their workman, which was received by the Central Government on 8-6-98.

[No. L-29011/32/92-IR(Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 5 of 1994

PARTIES :

Employers in relation to the management of Damodhar Cement and Slag Limited.

AND
their workmen

PRESENT :

Mr. Justice A. K. Chakravarty Presiding Officer.

APPEARANCE :

On behalf of Management Mr. P. Pathak, Advocate.

On behalf of Workmen None.

STATE : West Bengal INDUSTRY : Cement

AWARD

By Order No. L-29011/32/92-IR(Misc) dated 20-1-1994 the Central Government in exercise of its powers under section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of M/s Damodhar Cement and Slag Ltd., 6A. Middleton Street, Calcutta-71 to shift the office from Calcutta to Madhukunda, Purulia vide their notice dated 22-6-92 and 18-9-92 are justified or not? If not, to what relief the workmen are entitled?"

2. When the case is called out today for hearing, none appears for the union and no step is taken on its behalf, even though the management is represented by its learned Advocate. It appears from the record that the notice of the Tribunal issued under registered post came back with the postal endorsement 'left'. It further appears that the management by its letter dated 6-9-1997 informed the General Secretary of the Union the date fixed for hearing. Still then, none appeared on behalf of the union today and no step is also taken on its behalf in the matter. In the circumstances, it may be presumed that the union is no longer interested in the present reference.

3. In the aforesaid circumstances and in the absence of any material on record for any decision in respect of the schedule under reference, this Tribunal has no other alternative but to pass a "No Dispute" Award in this reference case.

4. A "No Dispute" Award is accordingly passed and the reference is disposed of.

This is my Award.

A. K. CHAKRAVARTY, Presiding Officer.

Dated, Calcutta,

The 27th May, 1998.

नई दिल्ली, 3 जून, 1998

का०ग्रा० 1282—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन बैंक के प्रबन्धतात्व के संबद्ध नियोजकों और उनके कर्मकारों के बीच, मनुवंश में नियष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, मध्रास के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-6-98 को प्राप्त हुआ था।

[सं० एल-12012/307/91-ग्राइंग्रार० (बी-II)]

सनातन, डैस्क अधिकारी

New Delhi, the 3rd June, 1998

S.O. 1282.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Madras as shown in the Annexure in the industrial dispute between the employers in relation to the management of Indian Bank and their workman, which was received by the Central Government on 2-6-198.

[No. L-12012/307/91-IR (B-II)]
SANATAN, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU MADRAS

Thursday, the 29th day of January, 1998

PRESENT :

Thiru S. Ashok Kumar, M.Sc., B.L., Industrial Tribunal, Industrial Dispute No. 22 of 1992

(In the matter of the dispute for adjudication under Section 10(1)(d) of the I. D. Act, 1947 between the Workmen and the management of Indian Bank, Madras).

BETWEEN

Shri Abdul Vakil,
C/o. 11-N, Nannah Sab,
Onion Merchant,
O.T. Road, Shimoga City,
Karnataka State.

AND

The General Manager,
Indian Bank, No. 31,
Rajaji Salai,
Madras-600001.

REFERENCE :

Order No. L-12012/307/91-IR (B-II), Ministry of Labour dated 12-3-92, Government of India, New Delhi.

This dispute coming on for final hearing on Wednesday, the 24th day of December, 1997, upon pursuing the claim counter statement and all other material papers on record, and upon hearing the arguments of Thiru K. K. Parthasarathy Advocate appearing for the petitioner and of Tvl. Aiyer and Dolia, R. Arumugam and B. Haribabu Advocates appearing for the respondent management and this dispute

having stood over till this day for consideration, this Tribunal made the following

AWARD

This reference has been made by the Central Government for adjudicating the following issue :

"Whether the termination of service of Thiru S. R. Abdul Vakil by the management of Indian Bank is justified ? If not, to what relief he is entitled to ?"

2. On service of notices, both the petitioner and the respondent filed their claim and counter statement respectively.

3. The main averments in the claim statement filed by the petitioner are as follows :

The petitioner was appointed on 1-10-66 as Daftry by the respondent management and promoted as Clerk in 1972 and was serving as Shroif of Sowcarpet branch, Madras City. His last drawn pay was Rs. 3,000 per month inclusive of all other allowances. The petitioner was suspended on 6-2-85 on certain allegations and was issued a charge sheet dated 25-8-86 enumerating into 14 charges which were denied by the petitioner. The above charge sheet was withdrawn by the respondent-management and another charge sheet dated 10-8-87 containing 9 charges said to be amendment of the earlier charges was served on the petitioner. The domestic enquiry was conducted against the petitioner and Thiru R. Ramani was appointed as an Enquiry Officer. No explanation was called for from the petitioner for the charge sheet issued against him and thus enquiry was conducted straightaway without even giving an opportunity to the petitioner. The petitioner was not provided with several documents applied by him including preliminary investigation report and audit report. In the domestic enquiry sufficient documents were not given to the petitioner and the enquiry itself was conducted against principles of natural justice. The domestic enquiry is vitiated by these gross and serious irregularities. The petitioner was made to give a confession before the C.B.I. Police by adopting third degree methods. The statement was relied upon by the Enquiry Officer and the statements recorded by the C.B.I. from the witnesses. The assistance of advocate was denied to the petitioner during the domestic enquiry. During the enquiry MW-2 was examined ex parte even before the cross-examination of MW-1. The questions asked by the petitioner during the cross-examination were twisted by the officer each time who was actually changing the matter to the prejudice of the petitioner. The Presenting Officer and the Enquiry Officer have both over stayed their depth and cross-examination was not held fairly and bona-fide manner. The domestic enquiry was neither fair nor proper and there was no real opportunity to the petitioner to cross-examine the management witnesses. The respondent-management passed orders dated 7-3-90 awarding the punishment of dismissal without notice by sending the finding of the Enquiry Officer. The action of the respondent is irregular and illegal as dismissal without notice is pre-determined and ultra-vires. On 15-6-90 when the petitioner wanted for personal hearing, the Zonal Manager said that there is no time to spare and asked him to give any representation in working. The petitioner requested that he may be permitted on 20-6-90, to which the Zonal Manager replied that all the points may be sent in the form of representation over again, which the petitioner did vide his letter dated 25-7-90. The Disciplinary Authority had not applied its mind to dismiss the petitioner because although no personal hearing materialised on 15-6-90, it is mentioned in the letter of the respondent dated 27-8-90, making a misrepresentation on this fact. The petitioner had sent his appeal on 24-9-90 to the General Manager the same was also dismissed. The dismissal is illegal and there was no fair and proper enquiry. The Enquiry Officer was biased and partisan and

his findings are perverse and one sided. The punishment of the petitioner is not only excessive but also shockingly disproportionate to the charges. The punishment imposed on the petitioner requires interference of this Tribunal under Section 11-A of the I. D. Act. The petitioner prays for an award to direct the respondent management to reinstate his service with full back-wages and other attendant benefits.

4. The main averments found in the counter statement filed by the respondent are as follows :

The petitioner was kept under suspension after detection of certain prima facie case against him while he was working as Teller in Sowcarpet Branch. The petitioner's allegation that the first charge sheet was withdrawn as he denied the charges is not correct. The respondent never withdraw the charges. Only a modified charge sheet was issued to the petitioner on 20-8-1987. The charge sheet was modified due to the split of whole proceedings process of fraudulent operation of the petitioner into two parts, one handled by the C.B.I. and another by the management for the institution of departmental proceedings. The enquiry was confined only with the frame work of the charges contained in the modified charge sheet. The petitioner was given full opportunity to defend himself in the enquiry against the charges framed in the modified charge sheet. The whole process of fraud committed by the petitioner to the extent of Rs. 1.5 lakhs was bifurcated into two parts and one aspect was handled by the C.B.I. and another was handled in departmental proceedings. The confession statement given by the petitioner to the C.B.I. was not considered in the enquiry against him. A fair chance was given to the petitioner to cross-examine the witness. But the petitioner walked out of the proceedings even after an assurance was given by the Enquiry Officer. He now cannot complain that the examination of the MW-2 was done ex parte. The enquiry was conducted in fair and proper manner and fair opportunity was given to the petitioner to cross-examine the management witnesses. The respondent denies the allegation that the dismissal order was issued without notice to him. There is no need for the management to issue notice because the gravity of the misconduct is grave one. The order was passed after taking into account the gravity of the misconduct by the petitioner. By a letter dated 22-5-90 the petitioner was given a date on 7-6-90 for personnel hearing at 3.00 p.m. The petitioner vide his letter dated 28-5-90 requested for another date for personnel hearing and stated that he was not in a position to attend the personnel hearing on 7-6-1990. Referring to his letter dated 28-5-90, the disciplinary authority fixed a date on 15-6-90 at 3.00 p.m. for the personnel hearing. The petitioner attended the hearing on 15-6-90 at about 4.45 p.m. at Zonal Office. He had mentioned that he was not prepared for the personal hearing and hence would write a letter wherein he would mention what all he had to say and send the reply before 10-7-90. Vide his letter dated 10-7-90 the petitioner contended that the personal hearing was not held on 15-6-1990. Though he had attended the same and has signed the relevant register for attending the personal hearing, he sought extension of time for submission of his reply on the ground of his wife's ill health. By his letter dated 25-7-90, the petitioner had denied all the charges again and made several allegations that the enquiry was not held properly, he was not permitted to be defended by a lawyer, he was not produced with all the documents he demanded etc. There is no substance in any one of the allegations made in that letter. Referring to his letter dated 25-7-90 the Disciplinary Authority imposed a punishment of "Dismissal without notice" for gross misconduct vide his order dated 27-8-90. Hence it is wrong to contend that a personal hearing was not given to him. The petitioner is resorting to flagrant lie. The records will show that personal hearing was given to him as per the rules. The petitioner's appeal was rejected and the punishment

was confirmed. The petitioner raised an I. D. before ALC (C), Madras. The dismissal is the proper punishment and the petitioner should not be reinstated and he is not entitled to any back wages as claimed by him. All the false contentions raised by the petitioner are denied as there is no substance in any of the contentions. The respondent prays to dismiss the claim statement filed by the petitioner.

5. The petitioner has examined himself as WW-1 and Exs. W-1 to W-18 have been marked. On behalf of the respondent two witnesses were examined and Exs. M-1 to M-11 were marked.

6. The point for our consideration is : Whether the dismissal of the petitioner from service by the respondent-management is justified ?

7. Point.—The petitioner Shiru S. R. Abdul Vakil was working as Shroff of Sowcarpet branch of the respondent-management at Madras. He was issued a charge sheet containing nine misconducts of fraud, misappropriation, forgery, and falsification of accounts. After enquiry the petitioner was dismissed from service and against the said dismissal order this reference has been made. A major part of the claim statement filed by the petitioner deals with the allegations of improper domestic enquiry, and perversity of the findings of the Enquiry Officer. The fairness of the enquiry and findings of the Enquiry Officer have been treated as preliminary issue and after hearing both sides my predecessor has passed an order on 18-2-1997 holding that the enquiry conducted against the petitioner is fair and proper and the report of the Enquiry Officer has been accepted and fair and just. The same day the case was posted for further hearing u/s. 11-A of the I. D. Act. The learned counsel for both sides argued on the justification of punishments u/s. 11-A of the I. D. Act. The learned counsel for the petitioner submitted that the order of termination of service is an extreme punishment causing economic death of the petitioner and Tribunal should take a lenient view by imposing a lesser punishment other than dismissal from service. The learned counsel for the respondent argued that the petitioner has manipulated records and falsification of accounts, forgery signature of the customer and misappropriated Rs. 1.5 lakhs by committing various criminal acts and the criminal cases in C.C. No. 8/87 to 12/87 (five cases) in which the petitioner was charge sheeted u/s. 420, 467, 468, 471, 477-A of the I.P.C. and u/s. 5(1)(d) of the Prevention of Corruption Act, ended in Conviction, and therefore, in an industry like Bank such a criminal should not be reinstated in service and the only punishment that could be awarded against such a person is dismissal from the service.

8. The Judgement of five criminal cases C.C. Nos. 8/87, 9/87, 10/87, 11/87, 12/87 rendered by the VI Additional Special Judge, Madras have been produced before this Court. In all the above five cases the petitioner has been convicted under various sections of the I.P.C. for misappropriation, forgery, falsification of accounts and also Prevention of Corruption Act. The charge against the petitioner is that by creating false accounts and committing forgery he has swindled Rs. 1.5 lakhs. Whether the punishment of dismissal from service is proportionate or disproportionate to the misconduct alleged against the petitioner has to be decided ? In 1996 (1) S.L.R. page 645, the Hon'ble Supreme Court has held that for a misconduct of misappropriation of a large amount of Rs. 21,000 and odd for couple of months it could not be said that the punishment of dismissal as imposed on him was in no way called for or was disproportionate to the nature of the misconduct proved against the delinquent. In 1996 (2) S.C.C. Page 714 the Hon'ble Supreme Court has held as follows :

"It is obvious that the respondent has been convicted of a serious crime and it is a clear case attracting under proviso (a) to Article 51(2) of the Constitution. In a case of such nature—indeed in cases involving corruption, there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to the public interest. The amount misappropriated may be small or large; it is the act of misappropriation that is relevant. The Director had inter-

ferred with the punishment under a total misapprehension of the relevant factors to be borne in mind in such a case.

Accordingly, this appeal is allowed. Judgement of the High Court, Commissioner and the Director are set aside and the order of the Municipal Committee dismissing the respondent is restored."

In 1997 (2) L.L.N.S. Page 644, Allahabad Bank and another Vs. Deepak Kumar Bose, the Hon'ble Supreme Court has held as follows :

"What in an offence involving "moral turpitude" must depend upon the facts of each case. But whatever may be the meaning which may be given to the term "moral turpitude" it appears to us that one of the most serious offences involving "moral turpitude" would be where a person employed in a banking company dealing with money of the general public, commits forgery and wrongfully withdraws money which he is not entitled to withdraw." "As already observed, the very fact that the investigation was conducted by the C.B.I. which resulted in the filing of a charge sheet, alleging various offences having been committed by the respondent was sufficient for the appellant to conclude that the pending prosecution the respondent should be suspended. It would be indeed inconceivable that a bank should allow an employee to continue to remain on duty when he is facing serious charges of corruption and misappropriation of money. Allowing such a employee to remain in the seat would result in giving him further opportunity to indulge in the acts of for which he was being prosecuted. Under the circumstances, it was the bounden duty of the appellant to have taken recourse to the provisions of Cl. 193 of the First Bipartite Settlement, 1966. The mere fact that nearly 10 years have elapsed since the charge sheet was filed, can also be no ground for allowing the respondent to come back to duty on a sensitive post in the bank, unless he is exonerated of the charge." Our Hon'ble High Court in 1966 (2) L.L.N. Page 1183, Chief General Manager, State Bank of India and Industrial Tribunal and another has held as follows :

"The power vested in the Labour Court or the Tribunal under Section 11-A to grant relief in appropriate cases, though visit is not unguided, and cannot be exercised whimsically, arbitrarily or in a perverse manner. The Court or the Tribunal is called upon to exercise a judicial power and not perform a managerial function like a Manager. While those in charge of the management, of an industry, if they so desire, freely condone or overlook lapses and misconduct of their employee without having to demonstrate the reasonableness of their action or in action, it is not open to the Court or the Court or the Tribunal to exercise its judicial power in that manner. The relief to be granted must be justified on the basis of rational and relevant criteria. An employee is required to maintain integrity at all times. Relatively minor lapses may not always be visited with the extreme penalty of dismissal. The unfortunate reality of widespread corruption at many levels in the society, cannot, however, be put forward as an excuse or justification for misappropriation or theft, and immunity from being penalised claimed in respect of such gross misconduct. While personal tragedy contributing directly to the lapse may call for leniency in the choice of penalty, each and every circumstances which the employee may chose to consider as compelling, cannot constitute a justification for setting aside the penalty imposed for an admitted act of gross misconduct."

1997 (1) L.L.N. Page 391 Division Bench of our Hon'ble High Court in Dharmapuri District Co-operative Sugar Mills, Palconde Vs. Labour Comt., K. Thiruvengadam, has held as follows :

"An analysis of the above judgements the position that emerges is that the Court should not entertain a misplaced sympathy towards a workman and shout

not prejudice the issue from the angle of rehabilitation. The question of rehabilitation and reformation could raise in a case of minor delinquency or misconduct. Where the charges are grave in nature, can the Labour Court exercising power under Section 11-A of the Act impose on a management a workman whose presence is likely to affect the morale and discipline of the entire factory. Should the management be embarrassed by the reinstatement of such a workman by denying the managerial function to which a management is entitled to, having regard to the facts and circumstances of the case. In our opinion, the acceptance of such a proposition would only lead to interfering with the managerial functions to the extent of destroying the discipline and control of the entire factory. We are clearly of the opinion that Section 11-A of the Act is not intended to embarrass the management to such an extent. Section 11-A of the Act was introduced to obviate the difficulty felt by the Labour Courts, Tribunals, etc, in modifying the judgements of discharge or dismissal or flimsy grounds solely with a view to render justice to the parties. The Labour Courts and Tribunals cannot mechanically use the words "the punishment being disproportionate to the charges." As observed by the Supreme Court of India unless the Labour Court finds the punishment to be highly disproportionate to the charges, the Labour Court should not interfere. One other aspect of the case may also be noticed before dealings with the judgements cited by Sri N. G. R. Prasad. On the facts of this case, the Labour Court had set aside the domestic enquiry and proceed to take evidence. On the evidence the Labour Court has rendered certain findings to which we have already made a reference. Having found the second respondent guilty of the charges, while exercising the function of imposing a punishment, the Labour Court is in fact in the position of management, and the sentiments expressed by the management, when they terminated the services of the second respondent have to be kept in mind and we do not think that different principles will apply to the Labour Court while determining the punishment to be awarded to the 'guilty worker.' A careful analysis of the judgements cited by Sri N. G. R. Prasad only suggests that in cases of minor misconduct like the use of abusive language or acts amounting to loss of confidence in the management, the respective engagements should not resort to the punishment of dismissal. One can easily see the line of thinking of the Supreme Court of India in relation to the minor and major misconducts. It is time to remind ourselves about the three charges held proved by the Labour Court itself. The first charge relates to negligence in the performance of duties, raising considerable embarrassment to the management. This charge by itself may amount only to loss of confidence, but the second charge relates to dishonesty and temporary misappropriation. It was sought to be argued that temporary misappropriation cannot be equated to theft. It may be so. But the intention of the worker and his general attitude are clearly visible from the proof of the said charges. The third charge related to the demand of the bribe of Rs. 100 from one Balasundaram and; Rs. 200 from P. K. Natesan. This in our view, is a very serious charge and could undermine the very reputation of the management. We are of the opinion that when the Court is faced with three charges all of which have been proved by evidence adduced before the Labour Court itself, it would be improper to have any misplaced sympathy in favour of the worker. The question of rehabilitation would only result in the destruction of discipline and morality in the entire factory. Section 11-A of the Act was not certainly intended to cause such an embarrassment to the management. In other words, we are of the opinion that the views expressed by the Labour Court in its concluding portion, in relation to the punishment, can never be sustained as views which a reasonable person can take. In other words, the views of the Labour Court, which we have already extracted in

our judgement can only be characterised as perverse. Various judgements of the Supreme Court cited above do give power to the High Court to interfere with the impugned award of the Labour Court. In this view of the matter, while upholding the findings of the Labour Court on the charges, we set aside the order of the Labour Court in so far as the punishment portion is concerned."

9. From the foregoing decision of the Honourable Apex Court and Hon'ble High Court of Madras, it is clear that an employee who has been convicted under Section 468 I.P.C. by a Criminal Court by committing forgery the proper punishment is dismissed from service and no sympathy should be shown to the delinquent employee and if such sympathy is shown it is only a misplaced sympathy. The petitioner has been charged for misconduct of committing forgery, falsification of accounts and misappropriated money to the tune of Rs. 1.5 lakhs, and he has been convicted in five cases filed against him. The punishment awarded to the petitioner is just and proper and there is no material to interfere with the said punishment. Therefore, the punishment of termination of service of the petitioner is justified. Award passed.

Dated, this the 29th day of January 1998.

THIRU S. ASHOK KUMAR, Industrial Tribunal

WITNESSES EXAMINED

For Petitioner-Workman :
WW-1—Thiru Abdul Vakil

For Respondent-management :
MW-1—Th. R. Ranganathan.
MW-2—Th. R. Ramani.

DOCUMENTS MARKED

Ex. W-1/25-8-86—First charge sheet issued to petitioner (Xerox copy).

Ex. W-2/20-8-87—Second charge sheet issued to petitioner (Xerox copy).

Ex. W-3/1-12-87—Letter from petitioner to respondent (Xerox copy).

Ex. W-4/8-8-88—Letter from petitioner to respondent calling for certain documents (Xerox copy).

Ex. W-5/17-1-90—Letter from petitioner regarding denial of legal assistance (Xerox copy).

Ex. W-6/22-3-90—Letter from petitioner regarding anomalies in the enquiry and calling for fresh enquiry (Xerox copy).

Ex. W-7/ —Postal acknowledgement for service of Ex. W-6 (Xerox copy).

Ex. W-8/28-5-90—Letter from petitioner pointing out unfairness in enquiry (Xerox copy).

Ex. W-9/ —Postal acknowledgement for service of Ex. W-8 (Xerox copy).

Ex. W-10/25-7-90—Letter from petitioner calling for fresh enquiry (Xerox copy).

Ex. W-11/24-9-90—Letter from petitioner to GM of the respondent regarding unfairness of enquiry (Xerox copy).

Ex. W-12/27-8-90—Dismissal order issued to petitioner (Xerox copy).

Ex. W-13/8-12-90—A petition filed by the petitioner before the Conciliation officer (Xerox copy).

Ex. W-14/ —Unsigned document used at the enquiry (Xerox copy).

Ex. W-15/ —Unsigned document used as the enquiry (Xerox copy).

Ex. W-16/18-8-91—Conciliation Failure Report (Xerox copy).

Ex. W-17/1-12-89—Summarized statement of management (Xerox copy).

Ex. W-18/26-10-89—Enquiry Proceedings (Xerox copy).
For Respondent-management :

Ex. M-1/20-8-97—Charge sheet issued by the management (Xerox copy).

Ex. M-2/9-8-88—Enquiry Proceedings (Xerox copy).

Ex. M-3/7-12-89—Memorandum summing up (Xerox copy).

Ex. M-4/3-2-90—Findings of the Enquiry Officer (Xerox copy).

Ex. M-5/7-3-90—Show cause notice (Xerox copy).

Ex. M-6/27-8-90—Dismissal Order (Xerox copy).

Ex. M-7/22-10-90—Order in appeal (Xerox copy).

Ex. M-8/17-1-91—Letter from Asst. Labour Commissioner enclosing 2-A petition dated 8-12-90 (Xerox copy).

Ex. M-9/ —Representation by Management to Asst. Labour Commissioner (Xerox copy).

Ex. M-10/18-8-91—Failure report (Xerox copy).

Ex. M-11/12-3-92—Order of reference (Xerox copy).

नई दिल्ली, 3 जून, 1998

का०श्रा० 1283 :—औद्योगिक विवाद प्रधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेंट्रल बैंक और इंडिया के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निषिद्ध औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक प्रधिकरण कलकत्ता के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-6-98 को प्राप्त हुआ था।

[सं० एल-12012/8/93—आई०श्रा०—(बी-II)]

सनातन, डैस्क प्रधिकारी

New Delhi, the 3rd June, 1998

S.O. 1283.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 2-6-98.

[No. L-12012/8/93 IR (B-II)]
SANATAN, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 29 of 1993

PARTIES :

Employers in relation to the management of Central Bank of India.

AND

Their Workmen

PRESENT :

Mr. Justice A. K. Chakravarty, Presiding Officer

APPEARANCE :

On behalf of Management.—Mr. S. K. Pramanik, Assistant Manager of the Bank.

On behalf of Workmen.—Mr. N. R. Basu, Vice-president of the union.

STATE : West Bengal.

INDUSTRY : Banking.

AWARD

By Order No. L-12012/08/93 IR(B-II) dated 14-5-1993 the Central Government exercise of its powers under section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

"Whether the claim of Central Bank of India Employees' Union that the termination of services of Sri Mahendra Mallick by the management of Central Bank of India was unjustified and that he is entitled to be appointed on regular basis in the services of the Bank are correct? If so, what relief, Shri Mallick entitled to?"

2. Central Bank of India Employees' Union, West Bengal has initiated this case in respect of termination of service of Shri Mahendra Mallick from the employment of the Central Bank of India.

3. The union's case, in short, is that the Branch Manager, Nakshabari Branch applied to the Local Employment Exchange under instruction from the Regional Manager, Siliguri to send a list of casual workers to perform the duty of safai karamchari against a permanent vacancy created by the resignation of one Bajnath Bhuiyani on 13-2-1990. Regional Manager, Siliguri allowed Nakshabari Branch to appoint a temporary safai karamchari on casual basis. The concerned workman, Mahendra Mallick was given such verbal appointment to work as a safai karamchari on casual basis commencing from 11-9-1990 on daily wage basis @ Rs. 20.30p. per day. He was, however, directed by the Branch Manager to perform his duty on the lump sum payment of Rs. 15 per day from 14-11-1990 to 21-8-1991 as no safai karamchari was provided permanently against the aforesaid vacancy. Shri Mallick used to perform the duties of safai karamchari such as sweeping of office premises, cleaning of bathroom and latrine and other duties to be performed by safai karamcharies. The Bank however discontinued the service of Shri Mallick by appointing Shanti Devi Mallick as permanent safai karamchari on 21-8-1991. Though Shri Mallick worked for 344 days continuously from 11-9-1990 to 21-8-1991, still then, the management having not absorbed him in service and also having appointed another person much junior to him in service as permanent safai karamchari, the management, it is alleged, has acted illegally, arbitrarily and vindictively. The union has accordingly prayed for appointment of Mahendra Mallick with retrospective effect and to treat his service as continuous one and to pay him his arrear salary.

4. The management of Central Bank of India in its written statement admitted that Mahendra Mallick was initially engaged as casual worker in the Nakshabari Branch of the Bank and he worked there for 30 days. It's further case is that Nakshabari Branch of the Bank called for an interview of the candidates sponsored by the local Employment Exchange and in response to that Shri Mallick attended the interview. It is further alleged that he did not possess minimum qualification for recruitment to the post of part-time/full-time safai karamchari as per Bank's Central Office Recruitment and Promotion Department Circular No. CO/90-91/3 dated 3-4-1990. The Bank further alleges that it discontinued the casual employment of Shri Mallick on 12-11-1990, but as the Nakshabari Branch felt exigency of cleaning branch premises for hygienic condition, they entered into a verbal agreement with Shri Mallick to clean/sweep the bank premises in the morning and the contractual amount was fixed at Rs. 15/- per day considering the work and time to be taken for the said purpose. According to the Bank the service rendered by Shri Mallick from 14-11-1990 to 21-8-1991 was done by Shri Mallick as an independent contractor. The Bank has also alleged that regarding recruitment/appointment/absorption in the permanent category of the Bank it is governed by the rules, regulations, conventions and procedures adopted on all India basis through examination and on the basis of qualification. It was not possible for the Bank to absorb the workman as he was not eligible for such absorption. The Bank accordingly has alleged that the workman shall not be entitled to any relief and his case should be dismissed.

5. The matter was referred to this Tribunal for adjudication by the Central Government by its order dated 14-5-1993. During the pendency of this reference the concerned workman, namely, Mahendra Mallick died on 24-12-1994 and on the application of this widow and his only legal heir Mrs. Sabitri Mallick, she was substituted in the reference.

6. Since under sub section (8) of section 10 of the Industrial Disputes Act, 1947, no proceeding in relation to an industrial dispute shall lapse merely by reason of death of any of the parties to the dispute being a workman and the Tribunal is to complete such proceeding and submit its Award that the master has got to be disposed of in accordance with law. It is also to be noted that this provision cannot have any application because the deceased workman was not a party to the dispute and it was his union which is contesting the matter. In other words, the Tribunal is to complete the proceeding and no question of lapsing of such proceeding can arise in the above circumstances.

7. Heard the representatives of both sides.

8. Two witnesses were examined on behalf of the union, including the widow of the deceased workman. She has already been made a party in this proceeding. The other witness on behalf of the union is one Ramen Roy who was examined as PW-2 in this case. From his evidence it will appear that the concerned workman was engaged by the Branch Manager of Nakshabari Branch of the Bank and he rendered continuous service in the said branch as safai karamchari from 11-9-1990 to 21-8-1991 with breakage of one day's service on 13-11-1990. There is no dispute so far as the period of service rendered by the concerned workman. MW-1, Pinaki Charan Sengupta, Branch Manager of Nakshabari Branch of the Bank from 1989 to 28-2-1993 and under whom the concerned workman had worked also confirmed the said position that he worked from 11-9-1990 to 21-9-1991 with breakage of one day. This breakage of service for one day can be ignored because of the conduct of the management by employing him only one day after the so-called discontinuance clearly indicates that the management did not discontinue his service as a penal measure. By allowing him to do his work as usual one day after, clearly shows that the management was never serious about discontinuance of his service. Even assuming that there was discontinuance of service for one day, still then, admittedly the concerned workman having worked from 14-11-1990 to 21-8-1991, the period of service rendered by him in the second phase was more than 240 days.

9. The management in its written statement has tried to create confusion by saying that the service rendered by the concerned workman during the subsequent period was in the nature of service rendered by a contractor. I fail to understand what exactly was wanted to be stated by the management by proclaiming him to be a contractor. There is at least no evidence on this point. MW-1, on the other hand, totally demolished the case of contract of labour of the management by saying that he was engaged by him and he was retained as no substitute was sent by the Regional Office and as soon as the Regional Office sent he substitute, the service of the concerned workman was terminated.

10. Clearly, the concerned workman having worked for more than 240 days in a year and the Bank's circular dated 12-3-1991 for absorption of employees who have put in 240 days of continuous service in the available vacancies without any test or interview that the Bank ought to have absorbed Shri Mallik in service on the admitted permanent vacancy of Baijnath Bhuimali. Apart from the circular, the Bank also violated the provisions of section 25F of the Industrial Disputes Act, 1947 by terminating his service without service of any notice and paying him any compensation to the retrenched workman.

11. It is an established law that termination of service of any casual worker amounts to retrenchment within the meaning of section 2(oo) of the Industrial Disputes Act, 1947 and if such workman renders continuous service for more than 240 days in a year, the service of such casual worker cannot be retrenched without compliance of conditions laid down in section 25F of the said Act. It is also an established law that non-compliance of provision 25F renders the termination void and the master and servant relationship

must be deemed to be continuing till his service is lawfully terminated. In other words, he shall be entitled to get his reinstatement in service, if not prevented by any other cause like superannuation or death of the employee concerned.

12. In the instant case, the workman having died on 24-12-1994, no question of his reinstatement in service can arise. The management, however, having terminated his service illegally, he shall be entitled to receive all his wages from 22-8-1991 i.e. the date of his termination till his death i.e. 24-12-1994 at the admitted rate of Rs. 15/- per day. He will also be entitled to get his bonus for the said period.

13. Mr. Bose, representative of the union submitted that Mrs. Sabitri Mallick, the widow of Mahendra Mallick who has been made a party to the proceeding should be allowed to join the service as a Safaiwala in place of his husband and necessary direction in this regard should be issued upon the management by the Tribunal. I am not in a position to agree with this contention on the ground that any appointment on compassionate ground of any deceased workman not only fails for exclusive consideration of the employer of the concerned workman and any direction on this point shall amount to unwarranted interference by the Tribunal, but also any consideration for appointment on compassionate ground of the heir of the deceased workman shall amount extension of the scope of the reference, which this Tribunal is not empowered to do. In the aforesaid circumstances, the question of compassionate appointment of the widow of the deceased workman can be better left at the discretion of the management.

14. So, upon consideration of the relevant facts and circumstances in this case and the position of law in this matter, I find that the termination of service of Mahendra Mallick (since deceased) by the management of Central Bank of India was absolutely unjustified and he would have been entitled to be reinstated on regular basis, had he remained alive. Since he has died on 24-12-1994, the management shall pay to his widow through the union all the amount due to him from 22-8-1991 till his death on 24-12-1994 at the rate of Rs. 15/- per day alongwith bonus and monetary value of all other benefits that the deceased workman might have received till his death.

This is my Award.

Calcutta,

The 26th May, 1998.

A. K. CHAKRAVARTY, Presiding Officer

नई दिल्ली, 3 जून, 1998

कांशा० 1284 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में, केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबन्धतंत्र के संश्लेषणों और उनके कर्मकारों के बीच, अनुबंध में निर्विल्प औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-6-98 को प्राप्त हुआ था।

[सं० एल-12012/30/92-आई०आर.- (वी-II)]

सनातन, डैस्क प्रधिकारी

New Delhi, the 3rd June, 1998

S.O. 1284.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management

of Central Bank of India and their workmen, which was received by the Central Government on 1-6-98.

[No. L-12012/30/92 IR(B-II)]
SANATAN, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, PANDU NAGAR, KANPUR

Industrial Dispute No. 85 of 1992

In the matter of dispute

BETWEEN

Sri Shitla Prasad Singh,
Village & Post Raibigo,
District Sultanpur.

AND

Regional Manager,
Central Bank of India,
Hazaratganj Lucknow.

APPEARANCES :

B. P. Saxena for the workman and B. G. Agrawal for the Bank.

AWARD

1. Central Government, Ministry of Labour vide notification L-12012/30/92-I.R. (B-2) dated 6-7-92, has referred the following dispute for adjudication to this Tribunal—

"Whether the action of the management of Central Bank of India in awarding punishment of dismissal to Sri S. P. Singh Daftari, Kadipur Branch, without notice vide order of the Disciplinary Authority dt. 31-7-89 is just and legal ? If not what relief is the workman entitled to ?"

2. There is no dispute that the concerned workman S. P. Singh used to work as Daftari at Kadipur branch of the opposite party Central Bank of India. He was given a chargesheet dated 25-7-87. The first charge related incident dated 26-9-86 when he is alleged to have misbehaved with B. R. Tandon the then acting branch manager and had threatened him with dire consequences if he deducted the wages of period for which he remained absent. The second charge also relates to incident of his having locked himself inside the bank after banking hours and could have brought out only with the assistance of police. After completing enquiry report submitted on 29-8-88 by which it was found that both the charges were proved. On this basis of this report the disciplinary authority passed an order of dismissal dated 31-12-89. Feeling aggrieved the concerned workman had raised the instant industrial dispute in which it was alleged that enquiry was not fairly and properly held against the concerned workman. On facts it was denied that he had committed any act of misconduct as alleged in the charges, (1) & (2)

3. On the pleadings of the parties a preliminary issue regarding fairness and propriety of domestic enquiry was framed as under—

"Whether the domestic enquiry was conducted fairly and properly by the bank."

In the finding dated 19-9-96, this tribunal held that there was no procedural defect in holding of enquiry. On assessment of evidence it was found that charge no. 1 was not proved whereas charge no. 2 was proved. Hence, the management was given opportunity to prove charge no. 1 on merits.

4. The concerned workman felt aggrieved by this finding and order of the Tribunal hence he preferred writ petition against this finding on preliminary issue and order directing the management to prove charge no. 1. This writ petition was registered as 14335 of 1997. Hon'ble High Court vide order dt. 28-4-97 has held that this Tribunal should afford opportunity to both the parties to adduce evidence on both the charges. Further this tribunal has been asked to record finding on both the charges.

5. After the above order, the management examined its acting branch manager Balram Tandon M.W. 1, the concerned workman Shitla Prasad Singh has examined as W.W. 1 besides Kallumal W.W. 2 has also been examined.

6. First it will be seen if the concerned workman had extended threat with dire consequences as M.W. 1 Balram Tandon has stated that on 26-9-86, the concerned workman had threatened him not to deduct wages for his absence and had threatened to tear the register as well. In his cross-examination he has admitted that the concerned workman was not being given annual increments for the last ten years. However, he cannot say if washing allowance was not given to him since 1981. He has further admitted that the concerned workman had threatened to go on hunger strike for not getting the above three allowances. Concerned workman M.W. 1 has said not a word denying these allegations in his examination in chief. In this way the evidence of management is unrebuted. Hence I have no hesitation in accepting the unrebuted evidence of the branch manager. In this way charge no. 1 is proved.

7. On charge no. 2 once again Balram Tandon M.W. 1 has stated that the concerned workman has locked himself inside the bank premises after business hours and had retained keys with him Shitla Prasad Singh had stated that he was asked by the branch manager to close the office doors and windows, while he was doing so the manager locked the main door from inside and went away hence the concerned workman was left inside the bank premises due to lapse of manager. From the window he has asked the stranger to rescue him. Kallumal W.W. 2 is that stranger. He had stated that on the request of the concerned workman from inside the bank premises he had gone to call the manager. Manager came and the concerned workman was taken out. It is admitted to the concerned workman that in the evening the manager had come to the office along with the police and door was opened in the presence. These circumstances along goes to belie the version of the concerned workman. Had it been in normal

course of inadvertent mistake the manager would not have called the police. Hence I believe the version of the management and disbelieve the version of the workman. Accordingly this charge is also proved. The management has pleaded and proved that the work and conduct of the concerned workman from the very beginning had been bad. In view of this background I am not inclined to interfere with the quantum of punishment as well.

8. In view of above discussions, my finding is that, dismissal of the concerned workman is justified and the concerned workman is not entitled for any relief.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 3 जून, 1998

का०आ० 1285 :—औद्योगिक विवाद अधिनियम, 1947
(1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूनियन बैंक और इंडिया के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-6-98 को प्राप्त हुआ था।

[म० एल-12012/45/96—आई०आर०—(बी-II)
सनातन, डैस्क अधिकारी

New Delhi, the 3rd June, 1998

S.O. 1285.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Union Bank of India and their workman, which was received by the Central Government on 1-6-98.

[No. L-12012/45/96-IR (B-II)]
SANATAN, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
PANDU NAGAR, KANPUR

Industrial Dispute No. 82 of 1997

In the matter of dispute

BETWEEN

The General Secretary,
U.B.I. Staff Association,
55-A, Pahatwan Bareilly.
AND

The Regional Manager,
Union Bank of India,
R.O. 1st Floor,
Opp. GIC Begum Bridge,
Meerut.

APPEARANCES :

P. K. Tiwari for Union & M. L. Agarwal for the Bank.

AWARD

1. Central Government, Ministry of Labour, vide notification no. L-12012/45/96/IR-B-II dated 14-5-97 has referred the following dispute for adjudication to this Tribunal—

“Whether the action of the management of Union Bank of India in not giving the benefit of conveyance allowance to Sri P. S. Khati clerk-cum-cashier during his posting at extension counter MKD Degree college, Dehradun temporarily w.e.f. 28-6-93 to 22-12-93 as per circular no. 3434 of 3-5-89 of the management is legal and justified? If not to what relief he is entitled?”

2. The case of the concerned workman is that he was transferred to Dehradun branch on 20-4-93. From there he was temporarily transferred to Extension Counter at MKP Degree College, Dehradun which is located at a distance of about 4 kilometres from the main branch. As it was temporarily transfer in terms of circular dated 3434 of 9-5-89 he is entitled for conveyance allowance between 26-6-93 to 22-12-93. It has been further alleged that there is custom in the bank to pay additional expenses when temporary deployment is made, hence he is entitled for conveyance allowance as well.

3. The opposite party bank has contested the case and had denied that the concerned workman both on the basis of customs as well as on the basis of above mentioned circular is entitled for conveyance allowance.

4. In the rejoinder, nothing new has been alleged.

5. I have heard both sides and perused the circular no. 3434 dt. 9-5-89. It is exhibit W-2 on record. It reads as, under—

“Attention is invited to staff circular no. 3222 dt. 8-12-87, on the above subject Pursuant to a discussion with the representative of the management and All India Union Bank Employees Association on 3rd and 4th April, 1989, it is clarified that local temporary transfer allowance is meant for meeting the hardship caused to an award staff employee, on account of which temporary local transfer from headquarters which would necessitate incurring an extra/unseen expenditure. Since the purpose of this allowance is to reimburse an employee of the expenses which he may have to incur for taking lunch outside the normal place of his duty, wherever an employee is temporarily transferred or deputed to a local branch he should be paid local transfer allowance i.e., Rs. 5/- per day, irrespective of the fact that the period/duration of such temporary transfer is known/unknown.

According to this circular Rs. 5/- per day are to be given in case of temporary transfer for meeting expenses of taking lunch outside the normal place of duty. It does not speak of giving conveyance alle-

wance. The specific reference is about giving of conveyances allowance on the basis of circular 3434. Hence on the basis of this circular the concerned workman will not be entitled for conveyance allowance.

4. The concerned workman has also sought conveyance allowance on the basis of customs. As the reference by the ministry specifically relates to getting of conveyance allowance on the basis of circular no. 3434 of 9-5-85, this tribunal cannot entertain the claim on the basis of custom as it is beyond his the terms of reference and also this tribunal cannot go beyond the reference as envisaged in section 10(4) of I.D. Act.

5. Accordingly in the end my finding is that the concerned workman is not entitled for conveyance allowance on the basis of staff circular no. 3434 of 1989. Reference answered accordingly.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 3 जून, 1998

का०प्रा० 1286 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन औवरसीज बैंक के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के भीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-6-98 को प्राप्त हुआ था।

[सं. पंज-12012/50/94-प्राइ०प्रा०--(भी-II)]

सनातन, डैस्क अधिकारी

New Delhi, the 3rd June, 1998

S.O. 1286.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Overseas Bank and their workman, which was received by the Central Government on 1-6-98.

[No. L-12012/50/94-IR (B-II)]
SANATAN, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA PRESIDING OFFICER, CENTRAL GOVERNMENT INDUS-
TRIAL TRIBUNAL-CUM-LABOUR COURT,
PANDU NAGAR, KANPUR

Industrial Dispute No. 61 of 1995

In the matter of dispute

BETWEEN

Unnadhavaksh,
UPBE Congress C/o Indian Overseas Bank,
Aminabad,

AND

Regional Manager,
Indian Overseas Bank,
Regional Office,
10, Ashok Marg, Lucknow.

APPEARANCE :

B. P. Saxena for the Union and B. L. Agarwal for the Bank.

AWARD

1. Central Government, Ministry of Labour, vide notification No. L-12012/50/94-I.R. B-2, dated 30-5-95, has referred the following dispute for adjudication to this Tribunal—

“Whether the following demand raised by the U.P. Bank Employees Congress, Lucknow against the management of Indian Overseas Bank, Lucknow are legal and justified ?”

1. Reinstatement/regularisation of Sri Gopal Singh and 23 other temporary workmen in bank's service.
2. Confirmation of Sri Vipin Rastogi and Sri Gauri Shanker messenger. If so, what relief are the concerned workman entitled to?
2. As is obvious from reference order it relates to 24 workmen. Their names were not sent alongwith the reference order. This Tribunal later on wrote to the Ministry for furnishing these names, the same was sent by letter dated 15-5-97, by the Ministry.

3. There are twenty four workmen. According to claim statement following workmen have claimed regularisation—

“S|Sri Gopal Singh, Girraj Singh, Ram Dass, Bijendra, Suraj Pal, Suvesh Chandra, Ashok Kumar, Hoshiyar Ram Chawla, Daya Ram Driver, Ramphal.

Their names are found mentioned in annexure II attached with the claim statement. The other 14 workmen who have claimed reinstatement on the basis of wrong termination are as under—

S|Sri Roop Singh, Chhotey Lal, Gokul Singh, Budh Prakash, Tej Shanker Mishra, Surjit Kumar, Shiv Prakash, Murlidhar, Mohd. Islam Ansari, Subhash Chandra, Rajiv Mishra, Anil Kumar, Hiralal and Dinesh Chandra.

4. Apart from this there is also reference regarding confirmation of Vipin Rastogi and Gauri Shanker messenger. Roop Singh died during the pendency of reference.

5. The case of all the concerned workmen is that they were working on permanent post of staff messenger temporarily. After working for long time they were entitled for regularisation. Instead of regularising them the opposite party illegally termin-

ted the services of 14 workmen in utter breach of provisions of section 25H of I.D. Act. Hence this termination is bad. It is further alleged that the above mentioned 10 employees are entitled for regularisation as they have been working on permanent post for a long time.

5. Vipin Rastogi is entitled for confirmation w.c.f. 23-1-84 as he has been working intermittently on permanent post from 23-1-84 to the date the details of which have been given in para 12 of the claim statement. There is no pleading regarding the claim of Gaurishanker.

6. The opposite party has filed reply in which it has been alleged that as alongwith the reference order the names of workmen have not been given the same is bad in law. It is denied that the concerned workmen are working on permanent post. Vipin Rastogi is not entitled for confirmation.

7. In the rejoinder nothing new has been alleged.

8. In support of his case the concerned workman has filed Ext. W-1 to W-26, besides this witness have been examined. The management was given repeated opportunity to adduce evidence, but they failed to do so.

9. In the first place the claim of terminated employees may be examined. Out of the 14 workmen persons named above S|Sri Surjit Kumar W.W.1, Mohd. Islam Ansari, W.W.2, Budh Prakash W.W.3 and Gukul Singh W.W.4 have proved their respective cases. They have given their respective date of joining and have further stated that subsequent to their termination new hands have been engaged but they were not given opportunity. As there is no evidence in rebuttal, I have no hesitation in accepting the claim of these workmen. Accordingly it is held that termination of Surjit Kumar Mohd. Islam Ansari, Budh Prakash and Gokul Singh is bad in law being in breach of provisions sec. 25H of I.D. Act, hence they will be entitled for reinstatement. The remaining concerned workmen of this list are not entitled for any relief for want of proof.

10. As regards claim for regularisation of ten persons their claim have been proved by Vice President of Union Nihalladin W.W.5. This regularisation have been claimed on the basis of approach letter dated 16th August, 1990, copy of which is Ext. W-26 is on record. As there is no evidence in rebuttal it is held that bare claim of regularisation is also proved.

11. Similarly as there is unrebutted evidence against the evidence of Vipin Rastogi, I further held that this claim is also proved. Further the claim of Gaurishanker in the absence of pleading and proof is also not proved.

12. In view of foregoing discussions, my award is that the concerned workmen Surjit Kumar, Mohd. Islam Ansari, Budh Prakash and Gokul Kumar are entitled for reinstatement with back wages from the date of reference.

13. The remaining ten workmen, namely S|Sri Roop Singh, Chhotey Lal, Tej Shanker Mishra, Sheo Prakash, Murli Dhar, Subhash Chandra, Rajiv Mishra, Anil Kumar, Hiratal and Dinesh Chandra are not entitled for any relief as their termination has not been found to be bad for want of proof.

14. Ten workmen, namely, Gopal Singh, Girraj Singh, Ram Dass, Bijendra, Suraj Pal, Suresh Chandra, Ashok Kumar, Hoshiyar Ram Chawla, Daya Ram Driver and Ramphal are entitled for regularisation from the date of reference.

15. As regards the claim of Vipin the concerned workman will be entitled for confirmation from 1-1-85. It is added that he will only be entitled for benefit of continuity of service for the period regarding promotion and retiral benefits.

16. Reference is answered accordingly.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 9 जून, 1998

का०आ० 1287 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की घारा 17 के अनुसरण में, केन्द्रीय सरकार ओरिएंटल बैंक ऑफ कॉमर्स के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-6-98 को प्राप्त हुआ था।

[सं० प्र०—12012/116/86—प्राइंटर०—(बी-II)]
सनातन, इंस्प्रेक्टर अधिकारी

New Delhi, the 9th June, 1998

S.O. 1287.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Oriental Bank of Commerce and their workmen, which was received by the Central Government on 8-6-98

[No. L-12/12/116/IR(B-II)]
SANATAN, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA : PRESIDING OFFICER : CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL : NEW DELHI

I. D. No. 35/87

In the matter of dispute between :

Shri Satya Narain & Others,
through The General Secretary,
All India General Mazdoor Union,
67-B, Amrit Puri, Garhi, East of Kailash,
New Delhi.

Versus

The Principal,
Oriental Bank of Commerce Staff Training
College, D-985, New Friends Colony, New Delhi.

APPEARANCES :

Shri Sham Narain on behalf of Shri T. C.
Gupta for the workmen.

Shri Jagat Arora for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-12012/116/86-D.IV(A) dated 5th May, 1987 has referred the following industrial dispute to this Tribunal for adjudication :—

"Whether the demand of S|Shri Satya Narayan, Jaikirat Singh, Govind Singh, Dojpal and Ram Swaroop for reinstatement by the Principal of Oriental Bank of Commerce Staff Training College, New Friends Colony, New Delhi is justified? If so, to what other benefits these employees are entitled?"

2. The parties were issued usual notices and in pursuance thereto a statement of claim has been filed by on behalf of General Mazdoor Trade Union representing the workmen. In the claim statement it is stated that the workmen S|Shri Satya Narain, Jaikirat Singh, Govind Singh, Dojpal and Ram Swaroop had been employed as care takers and sweepers at the Staff Training College of the Bank and had been working since January, 1981 till 7th March, 1986 when their services were terminated without any notice or chargesheet. It is also stated that they were employed on permanent basis but the management, by way of unfair labour practice was depriving them of their legal dues. It was also stated that when they made a complaint before the Assistant Labour Commissioner regarding their legitimate demands, the Principal of the College dismissed them from service. The Management filed its written statement in which it had pleaded that none of the workmen were employed by it and they were all the employees of Shri O. P. Arora, who was a care taking catering contractor at the staff Training College of the management. It was stated that said Shri Arora was providing catering, care taking services to the residents of the Staff Training College who used to come there to attend the training programmes/courses conducted by the Staff Training College of the Bank. It is further stated that the applicants had raised an industrial dispute before the Assistant Labour Commissioner, Delhi Administration and had received payments before the said Labour Commissioner from their employer Shri O. P. Arora. It is also stated that the recruitment in the Bank is done through the process of Employment Exchange or by Banking Service Recruitment Board. It was stated on the basis of the information received from Shri O. P. Arora that the workmen had settled their dues with him. It is also stated that most of the workmen were running their own independent

business and some of them are employed by Shri O. P. Arora or some other similar establishments.

3. The Management has placed on record various documents to show that Shri O. P. Arora was a contractor with the Staff Training College of the management. In this connection reference may be made to the letter dated 21-2-85 under which Shri O. P. Arora has undertaken to provide catering arrangement at the Staff Training College. Another such letter produced on record is the letter dated 2-12-85. The management has also placed on record the various vouchers and the bills through which payments have been made to Shri O. P. Arora. Another document placed on record is the letter issued by Shri R. P. Malik, Labour Commissioner, Delhi Administration addressed to Shri O. P. Arora regarding non payment of wages to Shri Satya Narain and others and asking the contractor to appear before the said Labour Commissioner on 7-3-86. A copy of the statement of account of Shri O. P. Arora maintained in the Bank has been placed on record which shows that from this account various payments have been made to Shri Sat Narain, Jeet Singh, J. S. Rawat (Jaikrit Singh), Govind Singh, Ram Swaroop. Another document placed on record is a letter issued by the Govt. of India dated 9-11-87 in which the dispute raised by the present union regarding Raj Kapur, Bharat Singh and others has not been found fit for reference by the Govt. on the ground that these persons were neither appointed by the Bank nor their services were terminated by the Bank.

4. One Shri S. S. Mehra who was working as the Principal of the Staff Training College of the Bank has filed his affidavit by way of evidence in which the averments made in the written statement of the management are reiterated. It has been stated by Shri Mehra that Shri O. P. Arora was the contractor who provided catering services and exercised supervision and control over his staff. He also states that a similar dispute raised by some other employees was not found fit for reference by the Govt. It is stated by Shri Mehra that Shri J. S. Rawat is running his own business and sometime even came to the College to do some electrical works for which he charged money from the Bank as per the cash memo submitted by him. It is also stated that Shri Satya Narain is a skilled plumber and he has also owns a firm in the name of Uday Maintenance Company in the village Shahpur Jat, Delhi. In cross-examination Shri Mehra stated that the contractor used to make payment to his workers and the bills of the contractor were paid by the Bank which he used to submit to the college authorities. He has stated that the applicants were not working with the Bank.

5. The workmen concerned have also filed affidavits of Shri Tej Pal, Govind Singh, Ram Sarwan, Jaikrit Singh, Satya Narain. All these affidavits state that they had joined the services of the management and their services were illegally terminated on 22-2-86. It is stated that before the termination of services no notice or chargesheet were given to them. It was further stated that when the workmen demanded regularisation of services, their services were terminated. I may note that though in the statement of claim, applicants Shri Jaikrit Singh, Govind

Singh, Deen Pal and Ram Swaroop had alleged that their services were terminated on 7-3-86 but in the affidavits the date is stated to be 22-2-86. During the cross examination of the workmen, it has been admitted by them that no appointment letter was issued to them by the Bank. It is also stated that they did not know Shri O. P. Arora. It was admitted that they had gone to the Labour Department and had appeared before the Additional Labour Commissioner Shri Malik. In further cross-examination it was admitted that they received various amounts from Shri O. P. Arora. On the suggestion of the management that such amounts represented their salary, it was denied and it was stated that the said amount were received on account of refund of loan advanced to Shri Arora. They were unable to produce any document to show when the loan was advanced to Shri Arora.

6. The workmen have placed on record some documents to show that they were the employees of the Staff Training College. These documents include certain letters received by the workmen at the above said address, reports prepared as caretakers and two temporary employment letters for specified period in respect of the workmen. Shri Satya Narain and Shri Jaikirat Singh Rawat. The temporary appointments letters issued to Shri Satya Narain show that he was appointed as a temporary peon for a period of two months from 31st May, 1982 to 30th July, 1982 and thereafter from 31st July to 27th August, 1982. Similarly Shri Jaikirat Singh Rawat was appointed for the period 28th August, 1982 to 27th September, 1982 and thereafter from 28th September, 1982 to 27th October, 1982. In respect of other workmen no other appointment letter has been filed. The temporary engagement given to the above said workmen in 1982 for two months has been admitted in the subsequent affidavit of Mr. Mehra dated 7th August, 1991 filed as the Principal of the Staff Training College. He has confirmed that these are fixed term temporary employment which ended after the period as stipulated in the letter.

7. I have perused the entire record, heard the Ld. representatives of the parties.

8. The reference order itself in this case indicates the scope of the reference and i.e. whether the demand of the reinstatement by the concerned employees is justified or not. In the statement of claim allegations with regarding to termination of service on 7-3-86 have been made. The workmen have failed to show that they were in continuous employment till the year 1986 as stated by them. The stand of the Management that they were employed by one Shri O. P. Arora who was a canteen caretaker contractor is established on the basis of the record. All the workmen have admitted that they have received payment before the Conciliation Officer Shri Malik from Shri Arora which had also been drawn from the account of Shri O. P. Arora. The explanation given by all of them that it was in respect of a loan advanced to Shri Arora is unbelievable. It may also be seen that the other similar co-workmen who had also tried to raise a dispute acting under the banner of this very union failed to

get even a reference order from the Government. The workmen have not been able to show that there was any supervision or control exercised over them by the Principal or the officers of the Bank. As per their allegations they have remained in the service of the Staff Training College of the Bank for almost six/seven years but there has been no document produced by them to show such period of long employment. It is a well known fact that a regular employee of the Bank gets various letters from his employer like appointment letter, promotion letter, increments letters and such similar other correspondence. It cannot be believed that for such a long period of time no such document came in possession of the workmen. The workmen had also admitted in their cross-examination that they had raised a conciliation dispute before the Assistant Labour Commissioner Delhi for their wages which was settled by Shri O. P. Arora. In these circumstances I do not think that the workmen have been able to establish that there ever existed any employer employee relationship between them and the STC of the Bank and as such they cannot be treated to be workmen under the Industrial Disputes Act. It has also come in the evidence of Shri Mehra that one of the workmen Sh. Satya Narain is self employed as a skilled plumber and is gainfully employed with an Engineering Firm. The vouchers on which payment has been received by Sh. Satya Narain from the Training College for doing miscellaneous plumber job have also been placed on record.

9. The testimony of Shri Mehra, the Principal of the College is very clear in establishing that the concerned workmen were employed by Shri O. P. Arora. They were under the supervision and control of said Shri Arora. In cross-examination, he has also stated that the bills of Shri Arora were submitted to the College authorities and he received the payment. Shri Arora used to make the payments to the concerned workmen. Another noteworthy feature is that the workmen in their cross-examination have admitted that some other workers like S. Shri Raj Kapur, Bharat Singh, Bhupinder etc. were working with them in the College mess. These are the same persons in respect of whom the Govt. had declined to make a reference vide its letter dated 7-11-87. The workmen also admitted in their cross-examination that Shri O. P. Arora lives in the mess from the very beginning as the contractor. The evidence thus clearly establishes that the workmen concerned were not employed by the Staff Training College and were self engaged by the Principal as pleaded by them.

10. In view of my discussions above, I am of the opinion that the workmen are not entitled to any relief as they were not employees of the Management. Parties are, however, left to bear their own costs.

2nd June, 98.

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 10 जून, 1998

का०आ० 1288 :—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार न्यू बैंक ऑफ इंडिया (पंजाब नेशनल बैंक) के प्रबन्धतत्व के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-6-98 को प्राप्त हुआ था।

[सं० एल-12012/352/92—आई०आर०-(बी-II)]

सनातन, डैस्क अधिकारी

New Delhi, the 10th June, 1998

S.O. 1288.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of New Bank of India (PNB) and their workman, which was received by the Central Government on 10-6-1998.

[No. L-12012/352/92 IR(B-II)]
SANATAN, Desk Officer

अनुबंध

केन्द्रीय ओद्योगिक अधिकरण एवं भ्रम न्यायालय, जबलपुर
म०प्र०

डॉ० एन० दीक्षित

पीठासीन अधिकारी

प्र०क० सीजीआईटी/एलसी(आर) (52)/93

मनोहर चांदवानी
न्यू बैंक-29/318,
चिंचवानी पार्क के पास,
बैंगलोर, भोपाल-462 030

—प्रार्थी

वि०

केन्द्रीय प्रबन्धक,
न्यू बैंक ऑफ इंडिया
प्रेस काम्पलेक्स,
भोपाल-462 001

—प्रतिप्रार्थी

अवाई

दिनांकित 18-5-1998

1. भारत सरकार, भ्रम मंत्रालय, नई दिल्ली ने अपने आदेश संभ्या एल-12012/352/92—आई०आर० (बी II) दिनांक 3-3-93 के द्वारा निम्नलिखित विवाद निराकरण हेतु इस अधिकरण को भेजा है:—

अनुसूची

"Whether the action of the management of New Bank of India, Bhopal in terminating the services of Shri Manohar Chandwani w.e.f. 15-4-91 is justified or not? If not, which relief the workman is entitled to?"

2. दोनों पक्षों को स्वीकार है कि श्री मनोहर चांदवानी, न्यू बैंक ऑफ इंडिया, भोपाल शास्त्रीय में कलर्क-कम-टाइपिस्ट, भाह दिसम्बर, 89 में पदस्थ थे। इनके विशद्ध एक विभागीय जांच बैंक ने की। इस जांच के फलस्वरूप श्रमिक को सेवा से पृथक किया गया। श्रमिक के विरुद्ध इसी कदाचरण के लिए दांडिक प्रकरण ऋमांक 319/90 न्यायालय, न्यायिक दंडाधिकारी, प्रथम श्रेणी, भोपाल के न्यायालय में चला था। इस प्रकरण में आरोपी और अधियोगी ने राजीनामा किया और इसके आधार पर श्रमिक को धारा 419 तथा 420 भारतीय दंड सहित के अपराध से दोषमुक्त किया गया। श्री मनोहर चांदवानी की मृत्यु दि० 10-1-94 को [हुई तथा उनकी पत्नी श्रीमती भारती, पुत्री कु० गीता, पुत्र लोकेश कुमार और पुत्री टीना इनके वारिय के रूप में प्रकरण में पक्षकार बनाए गए।

3. प्रबन्धन के अनुसार न्यू बैंक ऑफ इंडिया को पंजाब नेशनल बैंक में मर्ज किया गया है। दिनांक 1-12-89 को श्रमिक मनोहर चांदवानी ने मैसर्स जान्सन एजेंसीज, को चैकबुक से एक कोरा चैक, जिस पर ग्राहक के हस्ताक्षर थे, चुराया। बाद में इस चैक को भरकर रुपये 40,500/- इस फर्म के खाते से निकाले। इस प्रकार श्रमिक ने गम्भीर कदाचारण किया। मैसर्स जान्सन एजेंसीज ने श्रमिक के विरुद्ध थाने में रिपोर्ट की। श्रमिक ने अपना कदाचरण स्वीकार किया और रुपये 40,500/- बैंक में जमा किए। श्रमिक के विरुद्ध विभागीय जांच की गई। जांच अधिकारी के समक्ष दिनांक 23-10-90 को श्रमिक ने आरोप स्वीकार किया। इस स्वीकारोक्ति के आधार पर जांच अधिकारी ने रिपोर्ट दी। श्रमिक को दण्ड के बारे में नोटिस दिया गया। श्रमिक को इस कदाचरण के लिये दिनांक 15-4-91 को सेवा से पृथक किया गया। श्रमिक का यह कहना गलत है कि उसे अपराध स्वीकार करने के लिए दबाया गया। फौजदारी अदालत में श्रमिक को इस आधार पर दोषमुक्त किया है कि उसका फरियादी से राजीनामा हो गया है। बैंक ने नियमों के अनुसार विभागीय जांच की है। श्रमिक की चूंकि मृत्यु हो गई है, इसलिए उसके उत्तराधिकारी कोई सहायता पाने के अधिकारी नहीं हैं।

4. श्रमिक के अनुसार यह असत्य है कि उसने मैसर्स जान्सन एजेंसीज की चैकबुक से एक चैक निकाला और इसे भरकर रुपये 40,500/- इनके खाते से निकाले। श्रमिक पर आरोप स्वीकार करने का दबाया डाला गया। श्रमिक को विभागीय जांच में नियमों के अनुसार अवसर नहीं दिए गए।

5. इस प्रकरण में प्रथम विचारणीय प्रश्न यह है कि क्या श्रमिक मनोहर चांदवानी ने विभागीय जांच में आरोप स्वीकार किए। जांच अधिकारी श्री जी० डॉ० कीशिक के कथन प्रबन्धन ने इस प्रकरण में कराए हैं। उनके अनुसार दिनांक 1-5-90 को विभागीय जांच की पहली बैठक हुई और इस दिन श्रमिक पर आरोप लगाए गए। श्रमिक ने

लिखित डिफेस पेश करने के लिए समय मांगा। वास्तव में अगर श्रमिक को आरोप स्वीकार था तो वे दिनांक 1-5-90 को ही आरोप स्वीकार कर लेते। उसके लिए श्रमिक को समय देने की कोई आवश्यकता नहीं थी।

6. दिनांक 1-5-90 को जांचकर्ता अधिकारी ने अगली तारीख दिनांक 31-5-90 लगाई। इस दिनांक को जांच नहीं हुई। इसके पश्चात् 23-10-90 को जांच हुई और इस दिन श्रमिक ने आरोप स्वीकार किए। दिनांक 23-10-90 को जांच रखी गई। इस सम्बन्ध में जांचकर्ता अधिकारी श्री कौशिक ने अपने प्रतिपरीक्षण की कंडिका-9 में कहा है कि 31-5-90 को विभागीय जांच में कोई कार्यवाही नहीं हुई। यह भी कहा है कि श्रमिक को अगली तारीख के लिए रजिस्टर्ड नोटिस दिया गया है। इसकी पोस्टल पावरी न्यायालय में प्रस्तुत नहीं की गई थी। यह सन्देहास्पद है कि विभागीय जांच को दिनांक 23-10-90 को कोई बैठक हुई तथा इस बैठक का ज्ञान श्रमिक को था।

7. जांचकर्ता अधिकारी को मूल विवादित चैक जांच में नहीं दिया गया। यह मूल चैक इस न्यायालय में भी प्रस्तुत नहीं किया गया।

8. उत्तराधिकारियों ने स्टेटमेन्ट ऑफ क्लेम में यह संशोधन किया है कि दिनांक 23-10-90 को जांच अधिकारी ने बैठक नहीं की और कर्जी प्रोसेडिंग तैयार की। इस भा खण्डन प्रबन्धन ने नहीं किया।

9. जो आरोप श्री मनोहर चांदवानी पर लगाए गए हैं, वे आरोप-पत्र के अनुसार यह है कि श्री चांदवानी ने क्रास चैक नॉ. 224498 मैसर्स जान्सन एंजेसीज जो वे भूल से बैंक में छोड़ गए थे और जिस पर हस्ताक्षर थे और अकाउन्ट पेयी लिखा हुआ था, उसे भरा और रुपये 40,500/- बैंक से निकाले। शब्द अकाउन्ट पेयी श्रमिक ने काटा और रुपया नकद निकाला। इस आरोप के लिए आधार्यक था कि मूल चैक इस न्यायालय में प्रस्तुत हो और जांचकर्ता अधिकारी को भी दिया जाए। ऐसा न करके प्रबन्धन ने गम्भीर अनियमितता की है, जिससे सन्देह उत्पन्न होता है।

10. जांचकर्ता अधिकारी की रिपोर्ट न्यायालय में प्रस्तुत नहीं है। इसकी नकल श्रमिक को भी नहीं दी गई थी। जबकि श्रमिक प्रारम्भ से ही कह रहा है कि उसने दिनांक 23-10-90 को आरोप स्वीकार नहीं किया। तब जांच अधिकारी की रिपोर्ट उसे देने और न्यायालय में प्रस्तुत करना अनिवार्य है।

11. ऊपर लिखी विवेचना का निष्कर्ष यह है कि श्रमिक की सेवा मुक्ति के आदेश दिनांक 19-8-91 अवैध है।

12. अवार्ड दिया जाता है कि श्री मनोहर चांदवानी बैंक की सेवा में निरन्तर 19-8-91 से मृत्यु दिनांक तक माने जायेंगे। तथा वे इस बैंक के कर्मचारी को प्राप्त होने

वाले वेतन और अन्य मुविधाएं पाने के अधिकारी रहेंगे। बैंक के नियमों के अनुसार उनकी मृत्यु की दिनांक से उनके उत्तराधिकारी फेमिली पेंशन पाने के अधिकारी रहेंगे। श्री मनोहर चांदवानी को देय राशि का भुगतान उनकी विधवा को होगा। अवार्ड मुद्रित होने की दिनांक से तीन माह के अन्दर वेतन और भत्ते की बकाया राशि उनकी विधवा को दी जाए और फेमिली पेंशन नियमों के अनुसार उत्तराधिकारी को दी जाए। अगर ऐसा नहीं किया जाता तो देय राशि पर 12 प्रतिशत प्रतिवर्ष की दर से ब्याज का भुगतान बैंक को करना होगा। दोनों पक्ष इस प्रकरण का अपना-अपना व्यय बहन करें।

13. नियमानुसार अवार्ड की प्रतियां भारत सरकार, श्रम मंत्रालय, नई दिल्ली को प्रेषित की जाती हैं।

डी० एन० दीक्षित, पीठासीन अधिकारी

नई दिल्ली, 4 जून, 1998

का०आ० 1289-ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डिपार्टमेंट आफ टेलीकम्यूनिकेशन, कलकत्ता के प्रबंध-तंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण, कलकत्ता के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-6-98 को प्राप्त हुआ था।

[सं. एल-40012/78/91-आई आर .(डीयू]

के. बी. बी. उण्णी, ईस्क अधिकारी

New Delhi, the 4th June, 1998

S.O. 1289.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Department of Telecommunications, Calcutta and their workman, which was received by the Central Government on 4-6-1998.

[No. L-40012/78/91-IR(DU)]
K. V. B. UNNY, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 37 of 1991

PARTIES :

Employers in relation to the management of
Calcutta Telephones.

AND

Their workmen.

PRESENT :

Mr. Justice A. K. Chakravarty,
....Presiding Officer.

APPEARANCE :

On behalf of Management : Mr. K. S. Goswami, Advocate with Mr. T. Chowdhury, Advocate.

On behalf of Workman : Mr. M. S. Dutta, Advocate.

STATE : West Bengal INDUSTRY : Telephones

AWARD

By Order No. L-40012/78/91-IR(DU) dated 19th November, 1991 the Central Government in exercise of its powers under section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Calcutta Telephones Department of Telecommunication, Taher Mansion, 8, Bentick Street, Calcutta in terminating the services of Sh. Netai Chandra Das w.e.f. 1-1-89 is justified ? If not, what relief the workman concerned is entitled to ?"

2. The case of the workman, in short, is that he was appointed by the management of Calcutta Telephones as a casual worker with effect from 1-2-1987 in a permanent vacancy for underground cable maintenance work and he was posted in the section of SDOP (Zone-iv) 26-27 Exchange (External), P-9/10, Ganesh Chandra Avenue, Calcutta. He used to be loosely called a casual labour though the job in which he was appointed was of a perennial nature. Though he was doing the service to the fullest satisfaction of the management, still then, his service was terminated with effect from 1-1-1989 without assigning any reason. At the time of his termination, he had already worked for two years and had worked for 248 days in 1988 and a certificate was issued by the management in this regard in his favour. The concerned workman made several representations verbally to the management for reinstating him in service without any effect. An industrial dispute was raised by the workman alongwith others before the Assistant Labour Commissioner (Central), Calcutta and conciliation having failed, the matter was referred to the Central Government which, in its turn, referred the matter to this Tribunal for adjudication. The workman has alleged that the termination of his service amounts to retrenchment under section 2(oo) of the Industrial Disputes Act, 1947 and is bad for violation of the provisions of section 25F of the said Act. The workman has accordingly prayed for his reinstatement in service with back wages.

3. The management of Calcutta Telephones in its written statement has alleged that the workman concerned was appointed as a casual labourer on purely temporary basis for a particular place of work, after completion of which he was to be disengaged. On completion of such work, the management terminated his service rightly without violating the provisions of section 25F of the Industrial Disputes Act, 1947 in as much as he worked for only 131 days in total. The management has accordingly prayed for dismissal of the claim of the workman.

4. The workman in his rejoinder has stated that the attendance register and the wage payment register under ACC-17 of 1988 would have conclusively proved that the workman had worked for 248 days in the year 1988 and that the certificate dated 5-4-1990 was correct. Rest of the allegations are merely repetition of the averments made by him in his written statement.

5. The management thereafter filed an application for amendment of its written statement alleging, inter-alia, that the name of the concerned workman was not sponsored by the Employment Exchange and that as no vacancy is available for the concerned workman, the Tribunal should not create any vacancy.

6. Heard Mr. Dutta, learned Advocate appearing for the workman and Mr. Chowdhury, learned Advocate appearing for the management.

7. Both sides have examined one witness each and they produced certain documents in support of their respective cases.

8. The case of the workman that he was appointed as a casual labourer with effect from 1-2-1987 and he worked there continuously till 1988 finds support from his evidence before this Tribunal. He stated in his evidence that in 1987 he worked for 263 days and in 1988 he worked for 248 days. In support of that statement, he produced a certificate issued by Mr. A. K. Bhattacherjee, SDOP (Zone-iv), 26-27 Exchange of the Calcutta Telephones dated 5-4-1990. The certificate truly confirms the statement of WW-1 in the matter. It also supports the case of the workman that he worked continuously in 1987 and 1988. The concerned workman was merely suggested in his cross-examination that he worked in total for 131 days, which he denied. It is very peculiar that though the workman persistently stated that he worked for the period as stated in the certificate (Ext. W-1), nothing was suggested to this witness that the certificate was false or that he managed to procure the same in any unfair way. The management also has not denied that the certificate (Ext. W-1) was not issued by its own officer Mr. A. K. Bhattacherjee who was authorised to issue the same.

9. The witness on behalf of the management is one Baldeo Prasad Shah. He produced certain

ACG-17 vouchers. It will appear from the evidence of the workman that he does not remember what he actually received as his pay. It, however, appears from his evidence that he received arrears apart from the amount shown in ACG-17 vouchers, Ext. M-1. It is therefore clear that all the ACG-17 vouchers in the possession of the management were not produced before the Tribunal. MW-1 in his evidence also did not state on oath that these are all the ACG-17 vouchers in possession of the management. It will therefore be extremely dangerous to rely on these ACG-17 vouchers alone to count the number of days of work rendered by the concerned workman.

10. I have already stated that the authenticity of the certificate (Ext. W-1) was not denied in this case. Even MW-1 in his evidence stated that Ext. W-1 is not a certificate and it is an inter-departmental office document. There cannot accordingly be any doubt about the genuineness of Ext. W-1. The management in its anxiety to disprove the statement regarding the service rendered by the concerned workman in 1987 and 1988 managed to procure two other documents from the self-same A. K. Bhattacherjee, namely, his letter dated 11-11-1992 indicating supersession of his earlier statement in respect of particulars of casual labourers engaged after 30-3-1985 vide Ext. M-3 and submitted an enclosed correct statement which is marked Ext. M-3(a). That this letter and the certificate dated 11-11-1992 do not merit a moment's scrutiny will be at once apparent from the evidence of MW-1 who stated that Ext. M-3 and M-3(a) are subsequent to the date on which the reference case was received by the Tribunal and registered. These two documents having thus been procured during the pendency of the present reference, they must be deemed to have been manufactured for the purpose of this case and no importance can accordingly be placed on the same for this reason alone, apart from the fact that the author of these two documents, namely Shri A. K. Bhattacherjee was not examined by the management even though he is still in service now as it will appear from the evidence of MW-1.

11. The workman has categorically stated in his evidence that an attendance register used to be maintained by the management in respect of the casual workers and he used to sign the same daily. This point was neither challenged in the cross-examination of WW-1, nor the witness examined on behalf of the management denied the existence of any attendance register. Attendance register, therefore, would have been the best evidence to prove the days of work of the concerned workman. With holding of the said document by the management raises an adverse presumption against the same that had that been produced, that would not have supported its case and would have supported the case of the concerned workman.

12. No reliance accordingly can be placed on the evidence produced on behalf of the management in this case in support of its case that the workman had rendered only 9 days' of service in 1987 and 122 days' in 1988. The workman's case that he had worked for 263 days in 1987 and 248 days in 1988 being proved by the certificate Ext. W-1 which is unimpeachable in character in view of the fact that its authenticity was not challenged and the correctness was not disproved. The case of the workman that he had worked for more than 240 days in both the years, namely, 1987 and 1988 accordingly have been proved. From the evidence of the workman as well as from the certificate there will hardly remain any doubt that the concerned workman was not appointed against a permanent vacancy but he was merely a casual worker working continuously without any break for more than 240 days in a year. The question is whether the service of such casual worker can be terminated without service or any notice or payment of compensation.

13. It is accordingly necessary now to examine the definition of the workman for an answer to the question whether casual employees can be said to be workmen. Under section 2(s) of the Industrial Disputes Act, 1947 "Workman means any person (including an apprentice) employed in an industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied,". It is therefore clear from the above definition that casual workman is also a workman. The provisions of Chapter V-A in respect of retrenchment of such workman shall accordingly be applicable in this case.

14. The workman has challenged the termination of his service for non-compliance of the provisions of Section 25F of the Industrial Disputes Act, 1947. I have already stated that there is sufficient materials on record to prove that the workman had rendered more than 240 days of continuous service in a year in the employment of the management. Under section 25F, one month's notice and retrenchment compensation is to be paid to the workman before termination of his service, which admittedly, was not done in this case. While dealing with 'retrenchment' as defined in Section 2(oo) of the Industrial Disputes Act, 1947 the Hon'ble Supreme Court in the case of State Bank of India v. N. Sundara Money, reported in AIR 1976 SC 1111 has held that the definition is comprehensive enough to admit all types of retrenchment and in such cases compliance of the conditions of Section 25F of the Industrial Disputes Act, 1947 are mandatory. In the case of L. Robert D'Souza v. Executive Engineer, Southern Railway reported in 1982(1) L.I.J. 330 it was held by the Hon'ble Supreme Court that casual daily rated is as good as a workman and section 25F of the Act will apply in their cases too. The only condition is that they

are to put in requisite number of days service to attract the provisions of Section 25F of the Industrial Disputes Act, 1947. In Delhi Cloth & General Mills v. Shambhu Nath Mukherji, reported in AIR 1978 SC 8 it was held by the Hon'ble Supreme Court that the effect of non-compliance of clauses (a) and (b) of Section 25F of the Industrial Disputes Act, 1947 would make the retrenchment invalid and illegal.

15. The workman has challenged his termination of service on the ground of non-compliance of Section 25F of the Industrial Disputes Act, 1947. The management of Calcutta Telephones, therefore, having not complied with the provisions of Section 25F of the Industrial Disputes Act, 1947 in terminating the service of the workman, acted illegally. That rendered the termination/retrenchment of service of the concerned workman void. The Hon'ble Supreme Court in the case of Mohan Lal v. Management of Bank of Baroda, reported in 1981 Lab. I.C. 806 held that an invalid retrenchment does not bring about any cessation of service. The Hon'ble Supreme Court also in the case of Union of India v. Sri Babu Ram Lala, reported in AIR 1988 SC 344 held that when the order of termination was declared void, the workman is entitled to back wages as if he continued in such service.

16. So, upon consideration of the facts, circumstances and the position of law in the matter, I am of the opinion that the management of Calcutta Telephones was not justified in terminating the service of Shri Netai Chandra Das. He shall accordingly be entitled to be reinstated in service as casual labourer and he shall also be entitled to the back wages from the date of termination of his service till his reinstatement.

This is my Award.

A. K. CHAKRAVARTY, Presiding Officer
Dated, Calcutta.

The 21st May, 1998.

नई दिल्ली, 9 जून, 1998

का. आ. 1290 --- श्रौद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कलकत्ता टेलीफोन्स के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट श्रौद्योगिक विवाद में केन्द्रीय सरकार श्रौद्योगिक अधिकरण, कलकत्ता के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-6-98 को प्राप्त हुआ था।

[मं. एल-40012/5/95-आई आ. (डी. यू.)]

वे. वी. वी. उण्णी, दैस्क अधिकारी

New Delhi, the 9th June, 1998.

S.O. 1290.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Calcutta Telephones and their workman, which was received by the Central Government on 9-6-1998.

[No. L-40012/5/95-IR (DU)]
K. V. B. UNNY, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA.

Reference No. 1 of 1996.

PARTIES :

Employers in relation to the management of
Calcutta Telephones.

AND

Their Workman.

PRESENT :

Mr. Justice A. K. Chakravarty
. . Presiding Officer.

APPEARANCE :

On behalf of Management : Mr. T. Chowdhury,
Advocate.

On behalf of Workman : None.

STATE : West Bengal. INDUSTRY : Telephones.

AWARD

By Order No. L-40012/5/95-IR (DU), dated 26-2-1996 the Central Government in exercise of its powers under section 10(1)(d) and (2-A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :—

“Whether the action of the management of Calcutta Telephones in terminating the services of Shri Kartick Chandra Das—alias Naresh Ch. Das is justified ? If not, to what relief the workman concerned is entitled to ?”

2. When the case is called out today, none appears for the workman and no step is also taken on its behalf, even though the management is represented by the learned Advocate.

3. It appears from the last order dated 12-5-1998 that in view of the continuous absence of the workman, last chance was given for appearance and for filing written statement, complete with the relevant documents, list of reliance and witnesses. No step, however, having been taken by the workman inspite of the said order, it can be presumed that the workman is no longer interested in the case.

4. In the aforesaid circumstance and in the absence of any evidence whatsoever, this Tribunal has no other alternative but to pass a "No Dispute" Award in the matter.

5. A "No Dispute" Award is accordingly passed and the reference is disposed of.

This is my Award.

Dated : Calcutta,

The 28th May, 1998.

A. K. CHAKRAVARTY, Presiding Officer.

नई दिल्ली, 9 जून, 1998

का. प्रा. 1291 :—श्रीधोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नैशनल इंस्टीट्यूट आफ इण्डस्ट्रियल ट्रेनिंग, मुम्बई के प्रबन्धतांत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट श्रीधोगिक विवाद में श्रीधोगिक अधिकरण, मद्रास के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-6-98 को प्राप्त हुआ था।

[सं. एल-42012/35/93-आई आर (झ. यू.)]
के. वी. वी. उण्णी, ईस्क अधिकारी

New Delhi, the 9th June, 1998

S.O. 1291.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Madras as shown in the Annexure, in the industrial dispute between the employers in relation to the management of National Institute of Industrial Training, Mumbai and their workman, which was received by the Central Government on the 9-6-98.

[No. L-42012/35/93-IR(DU)]
K. V. B. UNNY, Desk Officer
ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU, MADRAS

Wednesday, the 28th day of January 1998

Present :

Thiru S. Ashok Kumar M.Sc., B.L., Industrial Tribunal.

INDUSTRIAL DISPUTE NO. 84 of 1993

(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the Workmen and the Management of National Institute of Industrial Engineering, Bombay).

BETWEEN

Shri R. S. Ramanathan,
50, Jubilee Road,
West Mambralam,
Madras-600 033.

AND

The Chairman,
National Institute of Industrial Engineering,
Viharlakha, Bombay-400 087.

REFERENCE :

Order No. L-42012/35/93-IR(DU), Ministry of Labour, dated 19/20-8-93, Govt. of India, New Delhi.

This dispute coming on for final hearing on Thursday, the 4th day of December, 1997, upon perusing the Claim, counter statement and all other material papers on record, and upon hearing the arguments of Th. R. Yashood Vardhan & H. Mani, Advocates appearing for the petitioner-worker and of Th. R. San-karanarayanan, Advocate appearing for the respondent-management, and this dispute having stood over till this day for consideration, this Tribunal made the following.

AWARD

This reference has been made from the Government of India for adjudication of the following issue:

"Whether the action of the management of National Institute of Industrial Training, Bombay in terminating the services Shri R. S. Ramanathan is justified ? If not, what relief he is entitled to ?"

2. On service of notices, both the petitioner and the respondent appeared before this Tribunal and filed their claim and counter statement respectively.

3. The main averments in the claim statement filed by the petitioner are as follows : The petitioner is aged 32 years and gained rich experience in software engineering from Apple Industries Ltd. He has also completed B.Com. by correspondence course at Madras University. The petitioner was in continuous service of six years with one or two notional artificial breaks and his last drawn salary was Rs. 1,350/- . The petitioner joined the service of the respondent-management in 1984 at Bombay and worked in various capacities at Bombay, Baroda, and Hyderabad till he joined the service of the respondent on 22-12-1988. He was the senior most employee of the respondent-management and worked continuously at Madras as Programme-cum-General Clerk from 22-12-1988 till he was terminated illegally on 17-6-90. He had put in more than 240 days of service. The post in which the petitioner was employed is permanent in nature and after his removal from service illegally, his juniors and new hands have been employed and at present one Padmanabhan has been employed permanently in the said post after one Kishore was relieved from the same. The petitioner has sent several letters demanding his employment. The respondent has not followed the mandatory provision of the I.D. Act and hence the termination of the petitioner is illegal and void-ab-initio. The petitioner raised a dispute u/s. 2A of the I.D. Act, 1947 before the Conciliation Officer but the conciliation failed. The petitioner prays to pass an award holding that the action of the respondent-management in terminating the

service of the petitioner is not justified and to direct the respondent to reinstate him in service with back wages and other benefits.

4. The main averments in the counter statement filed by the respondent are as follows :

The respondent is an association registered under the Societies Registration Act. The respondent has been established as a Government of India Project with United Nations Assistance. The object of the respondent is to import training in Industrial Engineering. The respondent is basically a research oriented organisation and not a commercial organisation.

The deployment of individual workman not belonging to the category of academic post largely depends on the needs of the organisation at any given point of time. The nature of the functions of the respondent is such that it does not generate employment but merely helps academicians to use their knowledge to the benefit of the Nation.

The petitioner's father Mr. R. Suryanarayana had good contacts with the officials of the respondent. The petitioner's father approached the higher officials of the respondent and requested the respondent to accommodate the petitioner in their office. The petitioner as well as his father were made known that the accommodation could be given but it would be purely temporary and that the petitioner could at best gain experience and later claim a better job elsewhere.

It was in this background that the petitioner came to be employed in Bombay in the respondent's office as temporary employee. The appointment was in July 1984. The petitioner was paid wages on daily wages basis. The petitioner thereafter secured employment elsewhere and in fact the officials of the respondent gave him certificates to enable him to secure permanent employment. In June 1986, the services of the petitioner came to an end and secured employment elsewhere.

The petitioner was employed in some other company from 8-6-86 upto April 1988. In or around April 1988, the petitioner gave up his employment in the other place and once again approached this respondent for employment on a temporary basis. Once again the petitioner's father secured this job. The position was given at Hyderabad as the petitioner could not be accommodated at Bombay.

The second stint of employment also came to an end on 12th July, 1988. The petitioner's father once again pleaded with the respondent to offer employment to the petitioner in any of their office on a temporary basis. The respondent once again succumbed to the sympathetic plea of the petitioner's father and gave employment to the petitioner in their Madras Office with effect from 21-12-1988. The petitioner was paid a consolidated salary of Rs. 1,200 per month upto January 1990 and Rs. 1,350 from February 1990 onwards. The petitioner was designated as Programme-cum-General Clerk.

The petitioner was given employment on every occasion on a temporary basis. The employment was given more to help the petitioner's father and to enable the petitioner to get a permanent employmen

elsewhere. This aspect is evidence by the fact that the petitioner was once and again appointed on a temporary basis and when there was no permanent post available for the same. An act of sympathy has now been transformed into an Industrial Dispute. The respondent was not able to continue employ the petitioner after May 1990. The petitioner and the petitioner's father were informed in or around the second week of May 1990 that the petitioner will have to find his pastures elsewhere as the temporary appointment could no longer be extended and in any event cannot go beyond 18-6-1990. The petitioner found a job thereafter elsewhere and nothing was heard either from him or his regular correspondent namely his father. While so on 5-3-1992, the petitioner appears to have approached the Regional Labour Commissioner, Bombay for redressing his grievance of his non-employment. As usual the complaint of non-employment was sponsored by his father. The petitioner on the advise of the Regional Labour Commissioner, Bombay, approached the RLC, Madras on 10-6-92. The respondent resisted the complaint and orally made it known to the officer that the petitioner has been successful in securing an employment on his merits and at every point of difficulty the petitioner's father utilised his contacts to accommodate him with the respondent on temporary basis. It is needless to state that the very pattern of employment with the respondent would evidence the nature of employment.

The petitioner admittedly did not approach the Labour Officer from 18-6-90 till 5-3-92 as he had been in employment during that period. The petitioner is even now employed and has resorted to this dispute only to encash any possible windfall. The petitioner is guilty of delay and laches and he is not entitled to any relief from this Hon'ble Court.

The allegations that the petitioner had put in six years of service with one or two artificial breaks denied. The petitioner was not continuously employed for six years as alleged. Everytime a temporary appointment was given, as no permanent post was available. The petitioner was not employed against a permanent post as alleged. The allegation that the juniors have been retained is denied. The respondent prays to dismiss the dispute with ample costs.

5. The petitioner has been examined as WW1 and Exs. W-1 to W-5 have been marked. One witness has been examined as MW1 and Exs. M-1 to M-7 have been marked.

6. The point for consideration is : Whether the termination of the petitioner is justifiable ? and to what relief the petitioner is entitled to ?

7. The Point : The petitioner Thiru Ramanathan was employed as an Engineering Programmer-cum-General Clerk in the respondent management i.e. National Institute of Industrial Engineering at Bombay, Hyderabad and Chennai from June 1984 to June 1990 for above six years with certain breaks. There is no dispute that the petitioner was employed at Bombay from June 1984 to June 1986, at Hyderabad from April 1988 to July 1988 and at Chennai Institute from December 1988 to February 1990. Though the petitioner has claimed that he

worked at Baroda also in his claim statement, the same has denied by the respondent-management. The petitioner has not produced any document to show that he was employed at Baroda also. The petitioner was terminated from service in June 1990 even though no termination order was given to the petitioner by the respondent-management. The petitioner was not recruited through Employment Exchange or through any examination conducted by the respondent-management. The petitioner's father who was employed in the I.I.T. at Madras, under one Dr. Ramani who held vital post in the respondent management got employment for his son, the petitioner herein by his personal touch with Dr. Ramani. According to the respondent management, it is a Project Orient Organisation and the petitioner was appointed on contract basis, that there is no written contact between the petitioner and the respondent-management and when the project was closed, the service of the petitioner was not required any more and that the office at Madras and Hyderabad have already been closed and that the office alone functions. The contention of the petitioner is that the petitioner was terminated from service without any rhyme or reason. All of a sudden in June 1990 without following Section 25F of the I.D. Act and that the Juniors who have joined the service of the respondent have been retained after terminating the petitioner.

8. The learned counsel for the respondent management argued that only by the personal touch of the petitioner's father with Dr. Ramani the petitioner got employment and such employment was on contract basis, and the post held by him was only temporary and when there was no further work, the petitioner was not allowed to continue in service. The learned counsel for the respondent further argued that the contract of employment can be presumed in the circumstances of the case and the workmen concerned was retrenched on the expiry of such contract, an exception under Sec. 2(oo) (bb) of the I. D. Act. Whether the contract of employment has come to an end on the closure of the project is to be found out in the evidence available before this Court. M.W. Dr. P. Vijayan, has clearly admitted that even after termination of the petitioner the Madras office was functioning and that those who joined the service after the petitioner are still continuing in service. In the claim statement filed by the petitioner, the petitioner stated that after his removal from service his juniors and new hands have been employed and after removing one Kishore from the permanent post, one Padmanabhan has been employed permanently at present. For the above specific pleading, there is no specific denial on the part of the respondent in the counter statement filed by the respondent-management. Above all M.W. Dr. P. Vijayan has admitted that those who joined service in respondent-management after the petitioner are continuing in their service. The above evidence shows that the employment of the petitioner was not contractual in nature. But all the three times the petitioner was employed by the respondent at the instance of the petitioner's father who had personal touch with Dr. Ramani who was holding a vital role in the respondent-management. The initial appointment of the petitioner may not be ac-

cording to rules but for the petitioner cannot be penalised. The department can take action against the officials who gave irregular appointment but the petitioner cannot be asked to suffer. In 1986 Tamil Nadu Law Notes Journal at Page 153 our Hon'ble High Court held as follows :

"If there had been any irregularity committed by the Appointing authority, it is appointing authority, who should be proceeded against. It is because of the failure of the concerned superior authority in not taking a stern action against irregular appointment made by the Appointing Authorities, it results in innocent persons, who secures employment against considerable stress and odds and later in their service dispensed with as if the Appointing Authority, would at any time, arbitrarily terminate their services. The second respondent, having found that the third respondent had appointed the petitioners contrary to the rules, ought to have taken disciplinary proceedings against the third respondent. For errors and omissions committed by him, persons like that of the petitioners, who have secured the last grade post on permanent basis cannot be dealt with as if they could be dropped like hot cakes. Their future cannot be treated as light-heartedly. It is in this view, this Court, considering that even if the appointments had not been made through the Employment Exchange, or due to any other irregularity taking note of the difficulties to which the petitioners would be placed by throwing out of their employment arbitrarily, there petition are allowed, committed authority could have exercised its powers of exempting the rules which they do not satisfy. Such orders of exemption are not a rarity. Therefore, instead of taking action against the person who is responsible for passing orders he had been allowed arbitrarily and contrary to rules terminate the services of the petitioners."

Therefore, by holding that the appointment of the petitioner is irregular, the respondent management cannot contend that the termination of the service if the petitioner is justified.

9. There is no dispute that the petitioner was employed in the service of the respondent from December 1988 to June 1990 i.e., for nearly 19 months. The contention of the petitioner that he worked continuously for 240 days prior to termination of his service is not effectively disputed by the respondent-management. Even if the respondent-management felt that he should be retrenched, they should have followed the procedure contemplated Sec. 25-F of the I.D. Act. In 1990 (2) LLJ Page 70 the Hon'ble Supreme Court has held as follows :

"The expression 'retrenchment' means termination of the services of the workman for any reason whatsoever, other than those expressly excluded by the definition Sec. 2(oo) of the Act—The expression 'retrenchment' does not mean only termination by the em-

ployer of the service of surplus labour for any reason whatsoever—The expression ‘retrenchment’ is not to be understood in its narrow, natural and contextual meaning but is to be understood in its wider literal meaning to mean termination of service of workmen for any reason whatsoever.”

Our Hon’ble High Court in 1990 (2) LLN F 365, has held as follows :

“Continuous service for a period of 240 days in a period of one year—Meaning of—Workman in State Bank of India working in three different branches of the Bank with breaks for a total period of more than 240 days in a calendar year—Held, the period of service though in different branches of State Bank of India are under the same employer for more than 240 days—Termination of his service without following procedure prescribed in S. 25F is illegal—Workman, held is entitled to reinstatement with full back wages and incidental benefits.”

10. The contention of the learned counsel for the respondent-management that the nature of work was not permanent and that the petitioner was employed only on contract basis has been already rejected by me as not proved. In the above circumstances, the application of Sec. 2(oo)(bb) is not available to the respondent-management. The scope and applicability of 2(oo)(bb) and 25F has been discussed by the Hon’ble High Court of Punjab and Haryana in 1990 (1) L.L.J. Page 443.

“The amended provision in Sec. 2(oo)(bb) cannot be so constructed as to drastically restrict or orbit of the terms ‘retrenchment’. Clause (bb) is an exception which must be interpreted narrowly. It cannot be given meanings which nullify or curtail the ambit of the principal clause. No doubt the intention of Parliament in enacting the clause was to exclude certain categories of workers from the term “retrenchment”, but there is nothing in this clause which allows an outlet to unscrupulous employers to shunt out workers in the garb of non-renewal of the contract even when the work subsists. This clause as a whole has to be construed strictly in favour of the workman as far as possible as to ensure that the Act is implemented in the letter and spirit. If the termination is meant to exploit an employee or increase the bargaining power of the employer, then it has to be excluded from the ambit of clause (oo) and the definition of the term “retrenchment” has to be given full meaning. The contractual clause enshrined in clause (bb) cannot be resorted to frustrate the claim of the employee against uncalled for retrenchment or for denying the other benefits. It cannot be so interpreted as to enable an employer to resort to the policy of ‘hire and fire’ and give unguided power to the employer

to renew or not to renew the contract irrespective of the circumstances in which it was entered into or nature and extent of work for which he was employed. Clause (bb) has to be so interpreted as to limit it to cases where the work itself has been accomplished and the agreement of hiring for a specific period was genuine. If the work continues, the non-renewal of the contract has to be dubbed as malafide.”

11. In this case it is admitted that those who entered service after the removal of the petitioner have been retained in service and therefore, the contention that the petitioner has sent Ex. W-1 to the Regional Labour Commissioner at Madras on 10-6-92. But the petitioner has sent Ex. W-1 to the Regional Labour Commissioner at Madras on 10-6-92. Again the petitioner has sent letters to the Assistant Labour Commissioner, Madras on 21-1-93 and 3-2-93 which have been marked Exs. W-2 and W-4. Therefore, it could be taken that the petitioner raised this dispute in June 1992 i.e. two years later to his termination from service. The contention of the respondent management that the petitioner is employed elsewhere and therefore, he kept quiet for two years may be true. The petitioner did not raise any dispute for his termination of service at Bombay in June 1986 or at Hyderabad in July 1988 probably under the hope that the respondent will re-employ the petitioner. The petitioner who was terminated from service in June 1990 might have been waiting under the hope that he will get re-employment as in the case of the earlier occasions, and ought not have raised this dispute immediately. The mere failure of the petitioner to raise industrial dispute for two years cannot be termed as a disqualification for the petitioner to raise this dispute nor his claim can be termed as stale. The respondent-management has failed to observe the formalities enumerated under Sec. 25F of the I. D. Act.

13. In the above circumstances, I hold that the action of the management of National Institute of Industrial Training, Chennai in terminating the service of the petitioner is not justified and the petitioner is entitled to be reinstated with backwages from June 1992 and other attendant benefits. Award passed. No cost.

Dated, this the 29th day of January 1998.
THIRU S. ASHOK KUMAR, Industrial Tribunal

WITNESSES EXAMINED

For Petitioner-workman :

W.W.1 : Thiru R. S. Ramanathan

For Respondent-management :

M.W.1 : Dr. P. Vijayan.

DOCUMENTS MARKED

For Petitioner-workman :

Ex. W-1|10-6-92 : Petition under Sec. 2A of the I.D. Act, 1947 filed by the petitioner (Xerox copy).

Ex. W-2|14-10-92 : Counter filed by respondent to Ex. W-1 (Xerox copy).

Ex. W-3|3-2-93 : Counter filed by respondent to Ex. W-1 (Xerox copy).

Ex. W-4|27-1-93 : Petition to counter filed by the respondent (Xerox copy).

Ex. W-5|2-3-93 : Conciliation failure report (Xerox-copy).

For Respondent-management :

Ex. M-1|14-4-87 : Letter from Director to one Mr. Shah (Xerox copy).

Ex. M-2|8-9-88 : Letter from Petitioner's father to Director (Xerox copy).

Ex. M-3|10-6-90 : Letter from Petitioner's father to Director (Xerox copy):

Ex. M-4|18-6-90 : Letter from Petitioner's father to Director (Xerox copy)

Ex. M-5|22-10-90 : Letter from Petitioner's father to Director (Xerox copy).

Ex. M-6|5-3-92 : Representation to RLC Bombay (Xerox copy).

Ex. M-7|13-6-92 : Reply from RLC, Bombay (Xerox copy).

मई दिसंबरी, 10 जून, 1998 *

का. प्रा. 1292—श्रौद्धोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुमरण में, केन्द्रीय सरकार दूरसंचार विभाग, कलकत्ता टेलीफोन्स, कलकत्ता के प्रबंधरत्व के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्विष्ट श्रौद्धोगिक विवाद में केन्द्रीय सरकार श्रौद्धोगिक अधिकरण, कलकत्ता के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-6-98 को प्राप्त हुआ था।

[सं. एल--40012/205/91-आई. भार. (डीयू)]

के. वी. बी. उण्णी, डैस्ट्रक्ट अधिकारी

New Delhi, the 10th June, 1998

S.O. 1292.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Calcutta Telephone, D/o. Telecom., Calcutta and their workman, which was received by the Central Government on 10-6-98.

[No. L-40012/205/91-IR (DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 37 of 1992

PARTIES :

Employers in relation to the management of Calcutta Telephones.

AND

Their Workman

PRESENT :

Mr. Justice A. K. Chakravarty, Presiding Officer

APPEARANCE :

On behalf of Management—Mr. T. Chowdhury, Advocate.

On behalf of Workman—Mr. M. S. Dutta, Advocate.

STATE : West Bengal.

INDUSTRY : Telephones.

AWARD

By Order No. L-40012/205/91-IR(DU) dated 25th June, 1992 the Central Government in exercise of its powers under section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Calcutta Telephones, Dep't. of Telecommunication, Calcutta in terminating the services of Shri Amiya Kumar Ghosh w.e.f. 9-2-84 is justified? If not, what relief the workman concerned is entitled to?"

2. The instant reference has arisen at the instance of the workman.

3. The workman's case in his written statement is that he was appointed as a casual labourer for doing underground cable maintenance work and was posted in section of SDOP (Zone-iv)/26-27 Exchange (External) P-9/10, Ganesh Chandra Avenue, Calcutta on 1-6-1983 and though he was discharging his duties to the full satisfaction of his superiors, still then, his service was terminated by the management of Calcutta Telephones with effect from 9-2-1984 without assigning any reason. The concerned workman made several verbal representations before the management for reinstating him in service, but no action was taken by the management in the matter. The workman has alleged that he had put in 253 days of continuous service in the 12 calendar months preceding his termination and that termination of this service amounts to retrenchment. The workman raised an industrial dispute before the Assistant Labour Commissioner (Central), Calcutta, but that attempt having failed, the matter was referred to the Central Government, which referred the same to this Tribunal for adjudication. The workman has accordingly prayed that since the provisions of section 25F of the Industrial Disputes Act, 1947 had not been complied with while terminating his service that he is entitled to reinstatement in service with back wages.

4. The management of Calcutta Telephones in its written statement denied that the workman had put in 253 days of continuous service and alleged that from June, 1983 to January, 1984 the service rendered by him on casual basis was 179 days only and accordingly no question of violation of provisions of section 25F of the Industrial Disputes Act, 1947 can arise.

5. The workman in his rejoinder denied the allegations of the management of the Calcutta Telephones that he worked for 179 days only. Rest of the rejoinder is merely repetition of his written statement.

6. Both sides have produced their documents in support of their respective cases. The workman also examined himself and the management examined two witnesses on its behalf.

7. Heard Mr. Dutta, learned Advocate for the workman and Mr. Chowdhury, learned Advocate for the management.

8. Admittedly, the workman was appointed as a casual labourer. According to the workman he worked till 8-2-1984, while according to the management his service was terminated on 31-1-1984. Regarding his date of joining the workman has alleged in his written statement and evidence that it was 1-6-1983. The date as mentioned by the workman was not challenged by the management in its written statement and it was admitted that he had been working since June, 1983. Since the only question for

consideration in this case is whether the provisions of section 25F was violated or not in terminating the service of the workman, the days of actual work of the workman under the management require to be decided in this case. The qualifications for relief under section 25F is that he should be a workman employed in an industry and has been in continuous service for not less than one year under an employer. What is continuous service is defined and explained in section 25B of the Act. In view of sub-section (2) of section 25B a workman shall be deemed to be in continuous service, if he has 'actually worked under the employer' for a particular period. The expression 'actually worked under the employer' cannot mean those days only when the workman worked with hammer, sickle or pan, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. Thus, Sundays and other paid holidays should be taken into account for the purpose of reckoning the total number of days on which the workman can be said to have actually worked. In the case of Mohan Lal v. Bharat Electronics Ltd., reported in 1981 Lab. L.C. 806 it has been held by the Hon'ble Supreme Court that sub-section (2) of section 25B provides for a fixture to treat a workman to be in continuous service for a period of one year despite the fact that he has not been rendered uninterrupted service for one year, but he has rendered service for a period of 240 days during the period of 12 calendar months counting backward and just preceding the relevant date being the date of retrenchment.

9. In the instant case, as I have stated earlier, the date of retrenchment of the workman is 31-1-1984 according to the management and 9-2-1984 according to the workman. The difference between the two dates being not much, it may be assumed that the service of the workman was terminated on 31-1-1984 as alleged by the management and sought to be proved through its witnesses. The backward counting of "days actually worked" shall have to be calculated from that date upto the period of 12 calendar months to ascertain whether the workman rendered continuous service for a period of 240 days.

10. The sheet anchor of the workman's case in this matter is the two certificates issued by B. B. Das on 5-10-1984 and K. Roy on 15-7-1990, which were marked Exts. W-1 and W-2 respectively. These two certificates show that the workman had worked from 1-6-1983 to 8-2-1984. The authorship of the two certificates by the two officers of the Calcutta Telephones were not denied by the management. As a matter of fact, B. B. Das and K. Roy were examined as MW-1 and MW-2 in this case. Nowhere in his evidence MW-1 had stated that the certificate issued by him was wrong or that any mistake was made by him in mentioning the period of work of the workman. He also did not state in his evidence or gave any explanation why the certificate of work upto 8-2-1984 was given by him instead of 31-1-1984 on which date the service of the workman was aforesaid circumstances, the authorship of the certificate, alleged to have been terminated in his evidence. In the being admitted and there being absolutely no evidence on record that this certificate (Ext. W-1) was wrongly given and no reasonable explanation having also been given as to why this certificate was issued in favour of the workman that I find it difficult to place any reliance on his evidence before the Tribunal. It is true that management's other witness MW-2, Kunal Roy who issued the certificate marked Ext. W-2 tried to explain that the period of service of the workman till 8-2-1984, mentioned in the certificate, was made due to inadvertence because from the corresponding voucher dated 9-2-1984, he presumed that the service was rendered upto 8-2-1984. Apart from the fact that it is very difficult to rely on this absurd explanation, it does not lie in his mouth to deny the authenticity of a document which he issued in 1990. It is hardly expected that a responsible officer should issue a certificate in favour of a workman without being satisfied about the authenticity of the statement made in the certificate without consulting supporting documents before issuing such certificate. This witness also did not state in his evidence that apart from these 8 days, other particulars of the certificate were wrongly written. The certificates produced by the workman having thus not been challenged in respect of their authorship and authenti-

city, all the evidence led to the contrary by the management's witnesses at the time of trial hardly remains credible and capable of acceptance as true.

11. Mr. Chowdhury, learned Advocate for the management, however, submitted with reference to ACG-17 vouchers, Ext. M-1 and M-2 series and ACE-2 accounts, Ext. M-3 series that these would show that the workman had rendered 179 days of service, the details of which was given in the written statement of the management. If these vouchers are considered to be the only evidence regarding the days actually worked by the workman, then, of course, the workman is to be said to have rendered service for 179 days only from June, 1983 to January, 1984. The credibility of these documents however becomes nil, if these are considered in the background of the certificates issued by the two concerned officers. The dates of the certificates will show that one was issued almost immediately after the termination of service of the workman and the other was issued almost 6 years thereafter. I have also already stated that the certificates clearly show that the workman had rendered uninterrupted service for the period mentioned in the certificates. As there is nothing in the certificates to show that there is any break in the uninterrupted service of the workman, the story of break in service of the concerned workman during the period of service accordingly must be held to be an afterthought for the purpose of this case. The certificates apart, the authenticity of ACG-17 vouchers and ACE-2 accounts also becomes subject of great suspicion, if the manner in which these documents are prepared is taken into account. Regarding the preparation of these documents it will appear from the evidence of MW-1, B. B. Das that it is only on the oral statement of the workman that the bills are made after a month or so and that no register is maintained for showing how many days the workman worked. It is impossible to believe that bills are prepared only on the basis of the oral statement of the workman. It is also impossible to believe that there is no system of checking and cross-checking in a public sector industry. MW-2, Kunal Roy went a step further and stated in his evidence that the officer generally remembers the dates on which the casual labourers had worked and they prepared the bills after ascertaining from the workman about the days they actually worked. He also spoke of a peculiar system for payment of bills. According to MW-2 no document is required to be produced before the Cashier for receiving the money. He also said that he asks for temporary advance from the Cashier in a paper and on that basis the Cashier advance the money to him. No such paper is however produced before the Tribunal.

12. The workman in his evidence, on the other hand, has stated categorically that the management used to maintain attendance register in which he had to sign every day. Though the existence of any attendance register was denied by the management, still then, I am inclined to believe the evidence of the workman on this point because it is imperative that some sort of attendance register has to be maintained by the officer utilising the service of the workman not only for the purpose of his own safety but also for the safety of the administration. It is not possible to believe that an officer on the basis of his remembrance, however strong that power may be, has the capacity to remember the actual days of work put in by a casual labourer, specially when the bills to be prepared after a month or so. It will not therefore be unreasonable to believe that some sort of paper must have been maintained on behalf of the management to note the attendance of the workman. The management's failure to produce such document not only raises the adverse pre-umption that had that been produced that would not have supported the case of the management that the workman had worked only for 179 days, but would leave also showed the falsity of ACG-17 vouchers and ACE-2 accounts. The workman also has stated in his evidence that he had worked for 253 days and also stated that apart from these vouchers there are other vouchers in which he had signed for receiving the money and those are not produced by the management. In the said circumstances, I am to hold that the workman has succeeded in proving his case that he, at least, actually worked for 245 days, even assuming that the period of service rendered by him was upto 31-1-1984. Since I find no reason to disbelieve the certificates, mentioned earlier in this matter, I am to hold that he worked upto 8-2-1984, the period of his work being thus 253 days.

13. It is nobody's case that any notice and compensation as required under section 25F of the Industrial Disputes Act, 1947 was given to the workman before termination of his service. The workman having proved that he had rendered more than 240 days of service within the period of preceding 12 months of his termination, it was a clear case of retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act, 1947. While dealing with 'retrenchment' as defined in Section 2(oo) of the Industrial Disputes Act, 1947 the Hon'ble Supreme Court in the case of State Bank of India v. N. Sundara Money, reported in AIR 1976 SC 1111 has held that the definition is comprehensive enough to admit all types of retrenchment and in such cases compliance of the conditions of Section 25F of the Industrial Disputes Act, 1947 are mandatory. In the case of L. Robert D'Souza v. Executive Engineer, Southern Railway, reported in 1982(1) I.L.J. 330 it was held by the Hon'ble Supreme Court that casual/daily-rated workman is as good as a workman and section 25F of the Act will apply in their cases too. The only condition is that they are to put in requisite number of days service to attract the provisions of Section 25F of the Industrial Disputes Act, 1947. In Delhi Cloth and General Mills v. Shambhu Nath Mukherjee, reported in AIR 1978 SC 8 it was held by the Hon'ble Supreme Court that the effect of non-compliance of clauses (a) and (b) of Section 25F of the Industrial Disputes Act, 1947 would make the retrenchment invalid and illegal.

14. The management of Calcutta Telephones, therefore, having not complied with the provisions of Section 25F of the Industrial Disputes Act, 1947 in terminating the service of the concerned workman, acted illegally. That rendered the termination/retrenchment of service of the concerned workman void. The Hon'ble Supreme Court in the case of Mohan Lal v. Management of Bharat Electronics Ltd, reported in 1981 Lab. I.C. 806 (*supra*) held that an invalid retrenchment does not bring about a cessation of service. The Hon'ble Supreme Court also in the case of Union of India v. Sri Babu Ram Lala, reported in AIR 1988 SC 344 held that when the order of termination was declared void, the workman is entitled to back wages as if he continued in such service.

15. So, upon consideration of the facts and the position of law in the matter, I am of the opinion that the management of Calcutta Telephones was not justified in terminating the services of Shri Amiya Kumar Ghosh. He shall accordingly be entitled to be reinstated in service as casual employee and he shall also be entitled to the back wages from the date of his termination till reinstatement.

This is my Award.

Dated, Calcutta,

The 28th May, 1998.

A. K. CHAKRAVARTY, Presiding Officer

नई दिल्ली, 10 जून, 1998

का. आ. 1293—श्रौद्धोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूरसंचार विभाग, जबलपुर (म. प्र.) के प्रबंधतत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट श्रौद्धोगिक विवाद में केन्द्रीय सरकार श्रौद्धोगिक अधिकरण, जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-6-98 को प्राप्त हुआ था।

[सं. एल-40012/250/94-आई आर (डीए)]

के.वी.बी. उष्णि, डैम्फ अधिकारी

New Delhi, the 10th June, 1998

S.O. 1293.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of

the Central Government Industrial Tribunal Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of D/o Telecom, Jabalpur (M.P.) and their workman, which was received by the Central Government on 10-6-98.

[No. L-40012/250/94-IR(DU)
K.V.B. UNNY, Desk Officer.

अनुबन्ध

केन्द्रीय श्रौद्धोगिक अधिकरण एवं श्रम न्यायालय, जबलपुर (म. प्र.)

डी.एन. दीक्षित

पीठासीन अधिकारी

प्र.क्र. सीजीआईटी/एससी आर/68/96

श्री रामकिशन श्रामज गणपत प्रसाद

द्वारा : मचिव, कौमिल आफ ट्रैड यनियन,

1123, गर्ड टाउन, जबलपुर (म. प्र.) —प्रार्थी
वि.

महाप्रबंधक,

दूरसंचार,

1123, राहट टाउन टैली ग्राफ फैक्ट्री गेट

नं. 3 के सामने जबलपुर (म. प्र.) —प्रतिप्राप्त)

अवाई

निरांकित : 20-5-1998

1. श्रम मंत्रालय भारत सरकार नई दिल्ली ने अपने आदेश संख्या एल-40012/250/94-आई आर. (डी.ए.) दिनांक 26/2/76 के द्वारा निम्नलिखित विवाद निराकरण हेतु इस अधिकरण को भेजा है :—

प्रत्यक्षी

"क्या प्रबंधतत्र टैलीकाम (दूरसंचार) जबलपुर (म. प्र.) के प्रबंधकों द्वारा श्री रामकिशन एस-सीकर को स्वीपर के पद से नियमित न किया जाकर दिनांक 1/5/93 से भेवायें समाप्त की जाने की कार्यवाही न्यायोचित है। यदि नहीं तो संबंधित कर्मकार किस अनुत्तोष का हकदार है।"

2. दिनांक 9/1/98 को श्रमिक के श्रमिकाधिक उपस्थित हुए श्री अग्रिम दिनांक नोट किया। दिनांक 27/2/98 को श्रमिक अनुस्थित हो गया। इस दिनांक से आज तक श्रमिक न्यायालय में उपस्थित नहीं हुआ और उसने प्रकरण को अग्रिम कार्यवाही के लिये कोई प्रयाप्त नहीं किया। ऐसा प्रतीत होता है कि श्रमिक को इस विवाद के निराकरण में रुचि नहीं है। अवाई दिया जाना है कि प्रबंधन ने जो भी अदेश दिये हैं वे विश्वित हैं।

3. नियमानुसार अवाई को प्रतियां भारत सरकार नामने को भेजो जानी है।

डी.एन. दीक्षित पीठासीन अधिकारी

नई दिल्ली 11 जून, 1998

का. आ. 1294—ओर्गेनिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैं सिंगरेनी कोलरीज कम्पनी लिमिटेड के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओर्गेनिक विवाद में केन्द्रीय सरकार ओर्गेनिक अधिकरण, हैदराबाद-1 के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 26-5-98 को प्राप्त हुआ था।

[सं. एल-22012/326/96-आई आर (सी-II)]
लौली माओ, इंस्क अधिकारी

New Delhi, the 11th June, 1998

S.O. 1294.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Hyderabad-I as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s Singareni Collieries Co. Ltd. and their workman, which was received by the Central Government on 26-5-98.

[No. L-22012/326/96-IR(C-II)]
LOWLY MAO, Desk Officer.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I, HYDERABAD

PRESENT :

Sri V. V. Raghavan, B.A., LL.B.,

Industrial Tribunal-I, Hyd.

Dated : 22nd day of January, 1998.

INDUSTRIAL DISPUTE NO. 62 OF 1997

BETWEEN :

Th: Chief Organising Secretary,
Singareni Coal Mines,
Karmika Sangh (BMS), H. No. C-81,
Vidyanagar, Godavarikhani,
Karimnagar Dist., (A.P.) ... Petitioner
And

The General Manager,
M/s. S.C.C.L., R.G.-II Area,
Godavarikhani, Karimnagar Dist.,
A.P.-505209. ... Respondent

Aparances :

None for the petitioner.

J. Parthasarthy, Advocate for the respondent.

AWARD

The Govt. of India, Ministry of Labour, New Delhi, by its order No. L-22012/326/96-IR(C-II) dt. 18-9-97 referred the following dispute U/s. 10(1)

(d) and 2(A) of the Industrial Disputes Act, 1947 for adjudication to this Tribunal :

"Whether the action of management of M/s. S.C.C.L., Ramagundam Area II, Godavarikhani in suspending Sh. J. Rajeshwar Rao, Fitter, for the period 31-5-94 to 2-6-94 is legal and justified ? If not, to what relief is the workman entitled ?"

(2) After receipt of the above said reference this Tribunal has issued notices to both the parties. Both the parties received it. When the matter was called on 6-11-97, 25-11-97, 22-12-97 and 22-7-98 neither the petitioner union nor the concerned workmen appeared before this Tribunal. No representation was even made on their behalf. The respondent was present and filed vakalat. It is understood that the petitioner as well as concerned workmen have no interest to prosecute the matter. There is no other alternative except to close the reference as there is no triable issue involved in this case. The reference is closed.

Given under my hand and the seal of this Tribunal, this the 22nd day of January, 1998.

V. V. RAGHAVAN, Industrial Tribunal-I

नई दिल्ली, 11 जून, 1998

का. आ. 1295—ओर्गेनिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डमगोरिया कोलरी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओर्गेनिक विवाद में केन्द्रीय सरकार ओर्गेनिक अधिकरण, आसनसोल के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-5-98 को प्राप्त हुआ था।

[सं. एल-22012/393/93-आई आर(सी-II)]

लौली माओ, इंस्क अधिकारी

New Delhi, the 11th June, 1998

S.O. 1295.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Asansol as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Damagoria Colliery and their workman, which was received by the Central Government on 26-5-98.

[No. L-22012/393/93-IR(C-II)]

LOWLY MAO, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT ASANSOL

Reference No. 7 of 1994

PARTIES :

Employers in relation to the management of Damagoria Colliery.

AID

Their workmen

PRESENT:

Shri R. S. Mishra,
Presiding Officer.

APPEARANCES :

For the Employers : Shri P. K. Mahapatra,
Senior Personnel Officer.
For the Workmen/Union : Shri S. K. Singh,
Branch Secretary of the Union.
State : West Bengal. Industry : Coal.

Dated, the 1st May, 1998

AWARD

By Order No. L-22012/393/93-JR(C.II) dated 21-3-94 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :—

“Whether the action of the management of Damangoria Colliery in not regularising Shri Ajit Kr. Bouri, Paru Mondal, Mewa Ram and Prasanta Bharatiya as Excav/Project Helper and Shri S. D. Gupta as Store Keeper and thereby depriving the workmen concerned from their legitimate demand is justified? If not, to what relief is the concerned workmen entitled to ?”

2. The regularisation demanded by the union is in respect of two categories of jobs. The first category is Excav/Project Helper in Grade 'E' and the other category is Store Keeper. The industrial dispute was formally raised before the Asstt. Labour Commissioner (C) in 1992, because till then the management had not satisfied the demand of the workman for regularisation of the concerned workman named in the reference in respective job categories.

3. Now the management informs, through its written statement that the concerned workman named Ajit Kumar Bouri, Faru Mondal, Mewa Ram and Prasanta Bharatiya have already been regularised against the posts of Excav. Helper Grade 'E' with effect from 15-9-1993. These are the employees whose regularisation in the job category of Excav. Helper Grade 'E', was demanded by the union. The management further informs through its written statement that the last workman named S. D. Gupta has been regularised as Store Keeper with notional seniority with effect from 30-3-1984 and that promotional benefit to the cadre of Store Keeper Grade-'T' has also been given to him with effect from 4-12-1990. He is the employee, whose regularisation in the job category of Store Keeper was demanded by the union.

4. Now that the entire demand of the union, as reflected by the reference, has already been satisfied by the management, the industrial dispute does not exist.

5. The union attempted to widen the scope of the industrial dispute by advancing a demand in its written statement that regularisation of the above mentioned four employees in the job category of Excav. Helper Grade 'E', should be made with effect from 3-7-1991, 12-7-1992, 17.4.1991 and 9-10-1991 respectively instead of 15-9-1993, with effect from which date the regularisation has been given by the management. Similarly as regards the last employee named S. D. Gupta, the union now demands through its written statement that his regularisation in the post of Store Keeper Grade 'T' should be made with effect from 13-3-1984 instead of the date 4-12-1990, with effect from which date the management has regularised him in this post.

6. Apparently now the union has shifted its dispute from the primary question of regularisation to a demand for getting benefit of regularisation from a back date. In other words the dispute now raised by the union through its written statement is that the regularisation should be effected not from the dates fixed by the management, but from respective back dates. If this dispute is taken for consideration, the Tribunal would be required to examine whether given regularisation should be made effective from the dates put forward by the union or from the dates fixed by the management. This dispute is totally different from the dispute reflected by the reference made to the Tribunal.

7. Under the law, the Tribunal is bound to confine itself to the reference made to it by the appropriate Government and the Tribunal cannot suo-moto take up a new dispute for adjudication. Therefore the new demand/dispute now raised by the union, is not entertainable.

8. Award :—

The demand by the union having been already met by the management, no further dispute exists.

Reference answered accordingly.

R. S. MISHRA, Presiding Officer.

नई दिल्ली, 11 जून, 1998

का.आर. 1296—शौद्धोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसारण में, केन्द्रीय सरकार ईस्टर्न कॉलफील्ड्स लि. के प्रबन्धतात्व के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट शौद्धोगिक विवाद में केन्द्रीय सरकार शौद्धोगिक अधिकरण आसनसोल के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-5-1998 को प्राप्त हुआ था।

[सं.एल.-22012/559/95-आई भार (सी-II)]
लौली माओ, ईस्क अधिकारी

New Delhi, the 11th June, 1998

S.O. 1296.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Asansol as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Eastern Coalfields Ltd. and their workmen, which was received by the Central Government on 26-5-1998.

[No. L-22012/559/95-JR (C-II)]
LOWLI MAO, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL, ASANSOL
Reference No. 30 of 1996

PRESENT :

Shri R. S. Mishra, Presiding Officer.

PARTIES :

Employers in relation to the management of Samla Kendra Colliery of M/s. E. C. Ltd.,

AND

Their Workmen.

APPEARANCES :

For the Employer—None.

For the Workmen—Sri M. Mukherjee, Advocate.

INDUSTRY : Coal

STATE : West Bengal

Dated, the 1st May, 1998

AWARD

The Government of India in the Ministry of Labour in exercise of the powers conferred on them by clause d) of sub-section (1) and sub-section (2-A) of Section 10 of the Industrial Disputes Act, 1947 has referred the following dispute to this Tribunal for adjudication vide Government of India, Ministry of Labour's Order No. L-22012/559/95-IR (C-II) dated 21-8-96.

SCHEDULE

"Whether the action of the management of Samla Kendra Colliery, Pandaveshwar Area of M/s. E.C. Ltd. in not providing employment to the dependent of Shri Chhotu Shakti Bouri, Ex-Line Mistry who found medically unfit from 12-6-1984 is legal and justified ? If not, what relief the concerned workman is entitled to ?"

2. The Union's version is that on account of prolong illness, the workman was examined by the Medical Board on 12-6-1984 for ascertaining his fitness/unfitness for duty, that he was declared unfit for duty by the Board and that inspite of such physical disability he was not given Voluntary Retirement on medical ground and employment to his dependent was also not given.

3. The management says that the dispute was referred to an arbitrator under an agreement between the management and the union and that the arbitrator gave a negative award. The management also says that the workman worked upto 25-6-84 although he was declared medically unfit on his medical examination dated 12-6-84, that he was duly superannuated on the normal date of retirement which came hardly six days thereafter i.e. on 1-7-1984 and that there was no loss of employment.

4. Photocopies of entry in 'B' Form Register, Report of Medical Board and Arbitrator's Award are filed by the management. The established facts are that date of birth as noted in the 'B' Form Register is 1-7-24 and that the workman was declared unfit for duty by the Medical Board dated 12-6-1984 on the ground of conditions of general disability. The declaration was given hardly 18 days before expiry of service tenure. That the workman attended his duty till 25-6-1984 is not disputed by the union. The net result is that the workman remained absent from duty only for six days before his retirement.

5. Absence from duty only for six days before normal superannuation does not amount to loss of employment in practical sense. Therefore the social security measure in para 9:4:3 of the NCWA-III which was in operation in 1984, is not applicable.

6. The action of the management in not providing employment to the dependant of the concerned workman named Chhotu Shakti Bouri was not unjustified or illegal.

R. S. MISHRA, Presiding Officer

नई विली, 11 जून, 1998

का.आ. 1297—श्रोतोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट श्रोतोगिक विवाद में केन्द्रीय सरकार श्रोतोगिक अधिकरण आसनसोल के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-5-98 को प्राप्त हुआ था।

[सं. एल—22012/377] 93—आई आर (सी-II)]

लौली माओ, ईस्क अधिकारी

New Delhi, the 11th June, 1998

S.O. 1297.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Asansol as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of M/s. B.C.C. Ltd. and their workmen, which was received by the Central Government on 26-5-98.

[No. L-22012/377/93-IR(C-II)]

LOWLI MAO, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL, ASANSOL

Reference No. 6 of 1994

PARTIES :

Employers in relation to the management of
M/s. B.C.C. Ltd.

AND

Their Workman

PRESENT :

Shri R. S. Mishra, Presiding Officer

APPEARANCES :

For the Employers—Shri P. K. Das, Advocate

For the Workman/Union—Shri S. Mukherjee,
Advocate

INDUSTRY : Coal STATE : West Bengal

Dated, the 1st May, 1998

AWARD

By Order No. L-22012/397/93-IR(C.II), dated 16-3-94 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :—

“Whether the action of the management of M/s. BCCL, in not providing employment to the dependent son of Issaque Mia, Sh. Kasim Mia and thereby depriving him from the legal right is justified ? If not, to what relief is the concerned dependent of workman entitled to ?”

2. The union's version :—

The workman named Issaque Mia had been working as a piece-rated underground Trammer. Since about two years before his retirement he started suffering from hoarseness of voice and allied complications. The workman approached to the management with a complaint that he had become unable to discharge his normal duties. The management made a move for his medical examination with a report in the prescribed A.M.B.I. form. “March, 1931” was noted therein as date of birth of the employee. The colliery Committee scrutinised the papers on 11-6-1990. The Area Medical Board examined him and referred his case to the Apex Medical Board for final opinion. Ultimately he was examined by the Apex Medical Board on 8-2-1991. The Board instructed immediate admission of the patient in the E.N.T. Deptt. of the Central Hospital at Dhanbad for examination under G.A. and Biopsy if required. There was further direction to review the case within 15 days. The Medical Board while preparing its report on 8-2-1991, also endorsed in the required format that the date of birth was March, 1931. This endorsement was made because of information supplied from the colliery management level in the prescribed A.M.B.I. form that the date of birth was March 1931. The case of the concerned workman was reviewed by the Medical Board on 28-2-1991 and the Board gave the final opinion that he was unfit for any job due to cancer in larynx. However, because of impression that only a few days were left before superannuation in March, 1991. The Medical Board left the final decision regarding loss of employment to the Director (Personnel) and in fact the Apex Medical Board made an endorsement to this effect in their final opinion. Subsequently the workman named Issaque Mia submitted an application for employment to his son in pursuance of the provisions in Para 9.4.3 of the NCWA-IV, on the ground that he had become disabled during his service. But the management rejected the application of the workman on the plea and his date of birth was 12-2-1931 and that opinion regarding disability was not given by the Apex Medical Board before

the date of superannuation i.e. 21-2-1991. If the management would have correctly informed the Medical Board that the date of birth was 12-2-1931, instead of March, 1931, the Medical Board would not have made delay in giving their final opinion regarding disability of the employee. Delayed opinion by the Apex Medical Board as result of the mistake by the management in wrongly informing the Medical Board that the date of birth was March, 1931. The management should not be allowed to utilise consequence of its own mistake, to the detriment of the employee. Accordingly the demand of the workman for employment to his son should be considered by deeming that his disability was certified before his superannuation.

3. The management's version :—

Age of the concerned workman was assessed by the Age Determination Committee/Medical Board, to be 59 years on 22-2-1990. Accordingly his date of birth came to 12-2-1931 and date of his superannuation came to 12-2-1991. It is true that the concerned workman had put up his case complaining physical unfitness for his job and that his matter was referred to the Apex Medical Board. He was examined by the Board on 8-2-1991 and admittedly the Board advised his immediate hospitalisation in the Central Hospital at Dhanbad for examination under G.A. and Biopsy if required. Also admittedly the Apex Medical Board ordered for review of his case 15 days thereafter. While referring the employee's case to the Medical Board, in the prescribed A.M. B-I format, date of his birth was inadvertently noted as March, 1931 instead of the actual date i.e. 12-2-1931. The Apex Medical Board re-examined the workman on 28-2-91 and declared him unfit on that date, because of consequential wrong impression that the date of superannuation was March, 1991. Otherwise the Apex Medical Board would not have reviewed his case and would not have accordingly declared him unfit. Be that as it may the workman was in the meanwhile superannuated on 12-2-1991. There was no loss of his employment and certification of disability was not available before superannuation. Accordingly the precision in Para 9.4.3 of NCWA-IV for employment to dependant on the ground of disability of the employee during service, is not applicable. Son of the workman cannot be given beneficial employment under this scheme, as demanded by the workman.

4. Unnecessary confusion can be avoided if attention is focused on the question of superannuation. The management's version that assessment of the age of the workman at 59 years on 12-2-1990, through the Age Determination Committee/Medical Board, has not been disputed by the workman. On the contrary in his application for voluntary retirement and employment of dependant in his place, the workman mentioned that date of his birth was 12-2-1931 and that date of his superannuation was 12-2-1991. The union

filed a copy of this application on 2-5-1997 and the same is available in the record. It is interesting to note from this application that it was submitted by the workman on 26-7-1991. So it is even admitted by the workman that date of his birth was 12-2-1931 and date of his superannuation was 12-2-1991.

5. Social Security Provision regarding employment to one dependant of a worker who becomes permanently disabled, is contained in Para 9.4.3 of NCWA-IV, which was in operation during the relevant period. It requires that disablement of the worker concerned should arise from injury or disease, be of a permanent nature resulting in loss of employment and it should be so certified by the Coal Company concerned. All the three requirements i.e. (i) disablement of the employee, (ii) loss of his employment on account of such disablement and (iii) certification of such loss of employment by the Coal Company, are equally important. Even if disablement of a worker takes place during his service, the beneficial provision cannot be applied, unless loss of employment takes place and is certified by the Coal Company. The factor concerning loss of employment is equally important. The provision in Para 9.4.3 of the NCWA-IV is a social security measure and very obviously its aim is to provide social security to the worker in the form of employment to his dependant, if loss of his own employment takes place because of disability. There is no necessity to attract this social security benefit and it cannot be also attracted, if loss of employment of the worker himself does not take place.

6. Whether the Apex Medical Board could have given their final opinion regarding fitness-unfitness of the worker before the actual date of superannuation i.e. 12-2-1991 if the correct date of birth was informed to it, is altogether a hypothetical question. It is not necessary at all to delve into it.

7. Loss of employment is different from becoming sick for some days or becoming hospitalised for some days. In the letter addressed by the union to the General Manager (Personnel) of the management on 11-10-91 regarding employment to son of the workman, monthwise figure of attendance of the worker in 1990 and in January, 1991 has been furnished. Copy of this letter has been filed by the union. The total attendance during 1990 comes to 196 days and attendance in January, 1991 is 15 days. Might be, the worker could not attend his duty in 1990 becomes of sickness. The Union filed a death certificate in respect of the workman to show that he died on 30-7-1991. But only the disease-factor is not sufficient for applying the social security measure in Para 9.4.3 of NCWA-IV. The workman came to his duty even in the month of January, 1991, may be for 15 days. Obviously there was no loss of employment on his part before his superannuation which took place in February, 1991. Therefore, benefit of giving employment under Para 9.4.3 of NCWA-V is not applicable.

8. Award :—The action of the management in not providing employment to the dependant son of the workman, named Issaque Mia, was justified.

Reference answered accordingly.

R. S. Mishra, Presiding Officer

नई दिल्ली, 11 जून, 1998

का. आ. 1298.—औद्योगिक विवाद अधिनियम, (1947 का 14) की धारा 17 के प्रतिमरण में, केन्द्रीय सरकार ई.सी.एल., भनोरा कोलरी के प्रबंधतात्व के संबद्ध नियोजकों और उनके कर्मकारों के बीच, प्रत्युष्म में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, आसनसोल के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-5-98 को प्राप्त हुआ था।

[स. एल-22012/35/95-याई आर (सी-II)]
लौली माओ, ईस्क अधिकारी

New Delhi, the 11th June, 1998

S.O. 1298.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Asansol as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bhanora Colliery of ECL and their workmen, which was received by the Central Government on the 26-5-1998.

[No. L-22012/35/95-IR(C-II)]
LOWLI MAO, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, AT ASANSOL

Reference No. 42 of 1995

PARTIES :

Employers in relation to the management of Bhanora Colliery.

AND

Their Workmen

PRESENT :

Shri R. S. Mishra, Presiding Officer

APPEARANCES :

For the Employers : Shri P. K. Goswami,
Advocate.

For the Workmen/Union : Shri R. V. K. Singh
Bhati, Organising Secretary of the Union.

INDUSTRY : Coal

STATE : West Bengal

Asansol, the 26th May, 1998
AWARD

By Order No. L-22012(35)95-I.R.(C-II) dated 29-8-85 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2A of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :—

“Whether the action of the management of Bhanora Colliery of ECL under Sripur Area of ECL in not regularising Sh. Jagdish Dhobi as E.P. Fitter Helper from retrospective effect and also denying him promotion as E.P. Fitter Gr. II (Group C) as per promotion cadre Scheme of Excavation discipline in legal and justified If not, to what relief the concerned workman is entitled to ?”

2. The union case :—The concerned workman named Jagdish Dhobi was appointed on 15-6-1970 and then he worked as Surface Trammer Category III. On 18-7-1979 he was sent by the management for training as OCP Fitter. The period of training was two years. The workman was trained as motor mechanic and fitter and he successfully completed the training. On 1-7-1981 he reported for duty under his parent management. But the said management did not allow him to work even as E.P. Fitter|Helper in Group ‘D’|‘E’ of the Excavation Discipline and instead sent him to another colliery to learn the job of Dumper Driver. The workman returned back to his parent colliery after taking training as Dumper Driver. On being called upon by the management vide their order No. CM|SA|ATO|82| 1987 dated 12-4-1982, he attended suitability test for the post of O.C.P. Fitter Gr. II and he succeeded in the suitability test. But till now he has not been promoted|regularised as O.C.P. Fitter Gr. II. On the other hand, some of his juniors have been promoted to the level of Fitter Cat. IV and E.P. Fitter respectively. The most unfortunate part is that even though he has not been yet regularised at least as Helper in Group ‘E’, the management vide its order No. Agent|BH|00|87|648 dated 8-10-1987, has deployed him as Helper in the Vehicle Workshop of the colliery since the said date. The management should promote him or regularise his job as E.P. Fitter Gr. II (Group ‘C’) of the Excavation Discipline.

3. Although the management appeared through its authorised representative, the management did not file written statement. It also did not challenge the claim of the union in any other way. Hence the management was set ex-parte vide order dated 28-1-1997.

4. The union placed as many as 28 documents alongwith its statement of claim. The documents support each and every version of the union. Therefore the union’s case stand established.

5. Order :—The action of the management in not regularising the concerned workman named Jagdish Dhobi as E.P. Fitter|Helper with retrospective effect and in not promoting him as E.P. Fitter Gr. II (Group ‘C’) is illegal and unjustified. Direction to the management is to forthwith promote|regularise the concerned workman as E.P. Fitter Grade-II (Group ‘C’) in the Excavation Discipline.

Reference answered accordingly.

R. S. MISHRA, Presiding Officer

नई दिल्ली, 11 जून 1998

का. भा. 1299.—श्रीधोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस. ई. सी. एल. के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुवन्ध में निर्दिष्ट श्रीधोगिक विवाद में केन्द्रीय सरकार श्रीधोगिक अधिकरण राउरकेला के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-5-98 को प्राप्त हुआ था।

[सं. एल-22012/328/98-मार्ई आर (सी-II)]
सौली भाष्य, फैस्क अधिकारी

New Delhi, the 11th June, 1998

S.O. 1299.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Rourkela as shown in the Annexure in the industrial dispute between the employers in relation to the management of S.E.C.L. and their workman, which was received by the Central Government on 27-5-1998.

[No. L-22012/328/98-IR (C-II)]
LOWLI MAQ. Desk Officer

ANNEXURE

IN THE COURT OF THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, ROURKELA
Industrial Dispute Case No. 8/97 (C)

Dated, the 31st March, 1998

PRESENT :

Shri R. N. Biswal, L. M.
(O.S.I.S. Sr. Branch)
Presiding Officer
Industrial Tribunal,
Rourkela.

BETWEEN

The General Manager,
Ib Valley Area of SEC Ltd.,
PO : Brajrajnagar,
Dist. Sambalpur (Orissa),
PIN-768216

—1st Party

AND

Sri Daitari Jena, Through
The Joint Secretary
Brajrajnagar Coal Mines
Workers Union,
At/PO : Lamtibahal,
Via : Brajrajnagar
Dist. Sambalpur

—2nd Party

APPEARANCES :

For the 1st Party—Mrs. Rakhi Sikdar Advocate.
For the 2nd Party—Shri D. Mohanta, Advocate.

AWARD

The Government of India in Ministry of Labour Department in exercise of their power conferred under clause (d) of sub-section (1) and sub-section 2(A) of section 10 of the Industrial Disputes Act, 1947 have referred the following dispute vide reference No. L-22012/328/96 IR (C-II) dated 4.12.1990 for adjudication.

1. Whether the action of the management of Lajkura Sub-Area under Ib Valley Area of South Eastern Coalfields Ltd., Brajrajnagar, Dist. Sambalpur Orissa by terminating the services of Sri Daitari Jena, Dumper Operator with effect from 17-10-89 by way of dismissal is lawful and justified? If not, what relief the workman is entitled to?

2. The case of the 2nd party workman is that on 21-11-88, he was entrusted with the dumper bearing No. 2445 at Belpahar Open Cast Mines to drive it to Lajkura Open Cast Mines. He was not present at the spot either at Belpahar or at Lajkura while the diesel was filled in the said dumper. But he was served with a chargesheet alongwith suspension order from the 1st party management vide letter dated 24-11-88. He was charged under clause 17(1)(a) of the Model Standing Orders on the false allegation that he committed dishonesty in connection with 126 litres of diesel of 1st party management. On receipt of the chargesheet the 2nd party workman submitted his explanation denying the charge. However, the disciplinary authority having not been satisfied with the explanation so submitted, appointed an E.O. to enquire into the charge. The Enquiry Officer enquired into the charge and after conclusion of the enquiry held the 2nd party guilty of it and submitted his report in the disciplinary authority who affirmed the said report and terminated the service of the 2nd party workman, w.e.f. 17-10-89.

3. It is the further case of the 2nd party workman that he was not provided with the day to day copies of enquiry proceedings. The Enquiry Officer was biased against him and did not conduct the enquiry properly. Further more he contended that the punishment imposed against him is highly disproportionate. Under all these grounds he prayed to pass the award in his favour.

4. It is the case of the 1st party management that the 2nd party workman drained out 126 litres of diesel from dumper No. 2445 while driving it from Belpahar Open Cast Mines to Lajkura Open Cast Mines and thereby caused loss to it. The domestic enquiry against the 2nd party was conducted impartially in accordance with the principles of natural justice.

5. On the basis of the above pleading; of the parties the following three issues are framed :

1. "Whether the action of the management of Lajkura Sub-Area under Ib Valley Area of South Eastern Coalfields Ltd., Brajrajnagar Dist. Sambalpur, Orissa by terminating the services of Sri Daitari Jena, Dumper Operator with effect from 17-10-89 by way of dismissal is lawful and justified ?
2. To what other relief, the workman is entitled to ?
3. If the domestic enquiry held against the workman is fair and proper ?"

6. To prove its case, the 1st party management examined three witnesses while the 2nd party workman examined himself alone to prove his innocence.

7. Issue No. III, it is the established principle of law that the management can rely upon the domestic enquiry to justify the punishment or can lead fresh evidence to establish the same. In the present case, there is nothing in the pleadings of the 1st party management showing that it would rely upon the domestic enquiry. Even though the enquiry proceedings and findings thereof have been filed in this case, the same have not been proved. The witnesses examined on behalf of the 1st party management also do not whisper a single word with regard to the fairness of the domestic enquiry. So it cannot be held that the domestic enquiry was fair and proper.

8. Issue No. I.—It transpires from the evidence of M.W. No. 1 the Sr. Executive Engineer (Excavation) attached to the Central Work Shop situated at Belpahar that during the year 1988 he was the Executive Engineer at Lajkura Open

Cast Mines. On 28-11-88 he deputed 3 dumper operators including the 2nd party workman to Belpahar to bring empty 3 dumpers from Lajkura. All the 3 dumper operators went to Belpahar being accompanied by the foreman, K. R. Chowdhury by name who was authorised to receive the dumpers from Belpahar. On the same date Mr. Chowdhury received the dumpers from Belpahar and entrusted the 2nd party workman with the dumper bearing No. 2445 to drive it to Lajkura. After the dumpers arrived at Lajkura this MW-1 orders to fill up diesel was in the three dumpers, accordingly 245 litres of diesel was filled in the dumper bearing No. 2445. It further transpires from the evidence of this witness that as per the report of the foreman Mr. Chowdhury all the three empty dumpers left Belpahar at about 12.30 PM and reached at Lajkura at 3.30 PM. Since the distance between Belpahar and Lajkura is only 16 KM. ordinarily an empty dumper should not have taken more than one hour to cover this distance. According to the report (Ext. 1) received from Belpahar there was 298 litres of diesel in the tank of the dumper which was allotted to the 2nd party workman, when it left Belpahar. Ext. 2, the report from the Sr. Store Keeper, Lajkura shows that 245 litres of diesel was filled in the same dumper at Lajkura in order to make the tank full. Since the fuel capacity of a dumper is 400 litres MW-1 came to know that there was shortage of 126 litres of diesel while filling in the tank. During cross examination this witness admitted that he had no knowledge whether or not the foreman had shown the 2nd party workman the exact fuel position when the latter was entrusted with the dumper at Belpahar. It was further elicited from him during cross examination that he went by report which was officially received by him showing the actual fuel position. So he had no seen if 245 litres of diesel was filled in dumper No. 2445 on 21-11-88 after it reached Lajkura.

9. It transpires from the evidence of M.W. No. 2 the Sr. Security Inspector of Orient Colliery Valley that on 21-11-88 one Kartik Bhoi informed him that the 2nd party workman and two others were draining out diesel from three dumpers bearing No. 2443, 2444 and 2445. So M.W. No. 2 and his head security guard went to the spot and found diesel spreading on the ground with tyre prints thereon. Then he submitted a written report to the Project Officer vide Ext. 3. During cross examination he admitted that he lodged a F.I.R. in the local P.S., but he could not show the result thereof.

10. On preusal of the evidence of MW-3 who was Sr. Executive Engineer, Colliery Open Cast Mines, Belpahar it is lossing that on 21-11-88 he sent three dumpers to Lajkura Open Cast Mine. In dumper No. 2445 diesel measuring 298 litres was thereby that time. During cross examination he deposed that his foreman delivered the dumpers in his presence to the foreman who had accompanied the dumper operators. Usually the foreman and other engineers fill in the tank and report to him. He further deposed that on 21-11-88 the tank of dumper No. 2445 was filled to the brim and it run for six hours before it was made over to the foreman of Lajkura Open Cast Mines. Ordinarily a dumper consumes 17 litres of diesel per hour. He further specifically deposed that on 21-11-88 he personally measured the fuel of the dumper bearing No 2445 with a measuring rod and found 298 litres of diesel was there before it was released in favour of the foreman of Lajkura Open Cast Mine.

11. As discussed earlier, this witness deposed that usually the foreman and other engineers fill in diesel in the tanks of the dumper and report to him. There is no explanation why he himself measured the fuel of the dumper No. 2445 on the relevant date. Further more, as per the evidence of this witness the dumper in question alongwith two other dumpers was entrusted with the foreman, Mr. Chowdhury. But Mr. Chowdhury has not been examined. He was the best person to say whether 298 litres of diesel was there in dumper No. 2445 by the time it was released in his favour. As discussed earlier according to the evidence of M.W. No. 3 the dumper in question was filled to its brim on 21-11-88 and it had run for six hours before it was released to the foreman. Ext. 1 shows that on 20-11-88 102 litres of diesel was issued against dumper No. 2445 and there was previous balance of 298 litres of diesel. It does not show that in fact 102 litres of diesel was filled in dumper No. 2445 on 21-11-88. Moreover, it cannot be said arithmetically that a dumper consumes exactly 17 litres of diesel

per hour. As appears from the evidence of M.W. No. 3 in six hour the dumper consumed 102 litres of diesel. So out of 400 litres 298 litres ought have remained in balance and on measurement it was found exactly the same quantity of diesel which appears improbable.

12. Furthermore, as discussed earlier, according to M.W. No. 1 when diesel was filled in dumper No. 2445 at Lajkura the 2nd party workman was not present. The possibility that some one other than the 2nd party workman drained out diesel after it reached at Lajkura can not be ruled out.

13. Ext. A shows that the F.I.R. was lodged on 23-11-88 at 6.30 PM at Rampur out post by M.W. No. 2. If this witness came to know on the very date of alleged occurrence i.e. 21-11-88 that the 2nd party workman was draining out diesel from the dumper, there was no reason why he waited up to the evening of 23-11-88. Ext. 3 also shows that M.W. No. 2 reported this incident to the Sub-Area Manager of Lajkura Sub Area on 23-11-88. It is found from Ext. 3 that after the F.I.R. was lodged at Rampura out post MW-2 gave this report (Ext. 3) to the Area Manager. He could have given it earlier if at all he had known about the draining out of diesel from the dumper on 21-11-88 itself.

14. Furthermore, it is found from Ext. A, the final report that the I.O. went to the spot just after receiving the report and found no any diesel mark over at. So it casts a serious doubt on the authenticity of the case of the management. Apart from all these Kartika Bhoi, who is said to have seen the actual draining out of diesel from the dumpers has not been examined. There is no explanation for his non-examination. Neither any diesel has been seized from the 2nd party nor is there any evidence where he sold the same. In the decision "M/s. Glaxo Laboratories (I) Ltd. Vrs. Labour Court, Meerut and others" reported in 1983-Lab. I.C. (S.C.) at page No. 1900, their lordships of the apex court of the country held that "a statute is regarded as penal for the purpose of construction if it imposes fine, penalty, forfeiture, other than penalty in the nature of liquidating damage or other penalties which are in the nature of civil remedies. It is the general rule that penal enactments are to be construed strictly and not extended beyond their clear meaning (See Halsbury's Law of England-4th edition-Vol. 44- paragraph 909-910 at page No. 560). It cannot be seriously questioned that S.O. 22 is a penal statute in the sense that it provides that on prove of misconduct penalty can be imposed. It must therefore receive strict construction, because for a penalty to be enforced it must be quite clear that the case is within both the letter and spirit of the statute. In the case in hand the 2nd party workman has been dismissed from service for the alleged misconduct. Failure on the part of the management to prove the allegation strictly against the 2nd party workman would entitle him to be exonerated from the charge. So the action of the 1st party-management in terminating the services of the 2nd party workman w.e.f. 17-10-89 is neither lawful nor justified.

15. Issue No. II—In view of the finding on Issue No. I, the 2nd party workman is entitled to be reinstated. About nine years has already been elapsed since the service of the 2nd party was terminated. So in my view it would meet the ends of justice if fifty per cent of the back wages is paid to him with other service benefits.

16. Accordingly the order of termination of services passed against the 2nd party-workman by the management is set aside. The 2nd party workman shall be reinstated in service with fifty per cent back wages and other service benefits. Parties to bear their own costs.

Dictated and corrected by me.

R. N. BISWAL, Presiding Officer

नई दिल्ली, 11 जून, 1998

का.आ।. 1300.—ग्रोवोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.सी.सी.एल. के प्रबन्धतंत्र के संबंध नियोजनों और उनके कर्मकारों के बीच, अनुबन्ध में निश्चित ग्रोवोगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचाट

को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-5-98 को प्राप्त हुआ था।

[स. एल-22012/365/93-आई आर (सी-II)]

लौली मास्रो, डैस्क अधिकारी

New Delhi, the 11th June, 1998

S.O. 1300.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. S.C.C. Ltd. and their workmen, which was received by the Central Government on the 27-5-98.

[No. L-22012/365/93-IR (C-II)]

LOWLI MAO, Desk Officer.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-II, AT HYDERABAD

PRESENT :

SRI M.E.N. PATRUDU, B.Com., B.L.,

CHAIRMAN.

DATED : 30-04-1998.

I.D. No. 8/1994

BETWEEN

The Area Secretary,
Singareni Coal Mines Karmika Sangh (B.M.S.),
Manuguru, Khammam District, A.P. . .

. . . PETITIONER.

AND

The Chief General Manager,
M/s. S.C.C. Ltd.,
Manuguru, Khammam District, A.P. . .

. . . RESPONDENT.

APPEARANCES :

Sri K. Vasudeva Reddy, advocate for Petitioner.

Sri K. Srinivasa Murthy, advocate for Respondent.

AWARD

1. The four workmen in dispute Sarvasri Ch. Niranjan Reddy, A. Venkateswarlu, S. Suresh and K. Anjuiah are welders and employees of Singareni Collaries Company Ltd., at Manuguru in Khammam District.

2. The petitioner, the Karmika Sangh of the Collaries espoused the dispute about the placement of the above workmen in the category of E.P. Grade-'D' Welder. The Company rejected their demand. Conciliation efforts failed. The Government of India referred the dispute to this Tribunal for adjudication.

3. The point for decision is "Whether the action of the Management of S.C.C. Ltd., Manuguru in not placing the above four workmen in the Category of E.P. Welder Group-'D' is justified ? and whether the workmen is entitled for any relief?

4. The petitioner filed claim statement wherein it is stated that the four workmen are I.T.I. qualified welders and are appointed as welder trainees in Category-II w.e.f. 29-11-1991 after their successful apprentice training period in the Company. Subsequently they were promoted to Category-IV Pay Scale w.e.f. 29-11-1992. The petitioner claim is that the above four workmen were posted at workshop of open cast projects in Manuguru and all of them have been working and are working in the open case projects from the inception and as per the settlement, dated 3-3-1989, Annexure-III they are entitled for E.P. Group 'D' Pay Scales being worked in Open Cast Mines. It is also stated that similarly situated welders like Sarvasri Sivakotachary, Leela Prasad, Sharfuddin, Ramachari, Gopala Krishna, Krishna Reddy, Devender, Satyanarayana, who were also appointed as Welders and posted at O.C.P. Workshop were given E.P. Welder Grade-'D' dated 22-4-1992 i.e., from the date of their promotion to Category-IV from Category-II. The petitioners plea is that the workmen in dispute are also entitled for placement in E.P. Welder Group-'D' and also for pay scales in the same category from the date of their promotion to Category-IV; i.e., from 29-11-1992 and not from 25-4-1994 as they are not only put to monetary loss but also their seniority was effected.

5. The respondent filed counter denying all the allegations. It is stated that the reference is bad and it is not maintainable. The qualifications, selection, training and costing the workmen as Welders is an admitted fact. It is further stated that as per the appointment order the workmen are entitled for promotion only to Category-IV. It is also stated that the workmen are posted to work in the identified existing vacancies in Open Mine I and II, therefore as a matter of right they are not entitled for any placement in E.P. Grade-'D'. The contents of annexure-I of memo of settlement dt. 3-3-1989 dealing with the cadre scale of welders is reproduced and it is stated that the workmen are entitled for promotion to category-IV and not to E.P. Grade-'D' in Open Cast Mine. Nothing is mentioned with regard to annexure-III. It also admitted that Sivakotachari and others were placed in Group-'D' in Open Cast Mine after considering their suitability and their work on Heavy Earth-Moving Machine Equipment, without conducting any test in order to fill up the vacancies urgently. It is stated that later through circular, dt. 16-12-92 the management has taken a decision to select welders to place them in Group-'D' through test and training and accordingly the workmen in dispute are called for test and selected. It is also stated that the workmen are juniors to Sivakotachari and others and they can not compare them with their case. The case of management is that E.P. Group-'D' welders have to work on heavy Machinery and it is selection grade post and is not an automatic promotion and only against vacancies they must fill the posts. It is also stated that the workmen in dispute who are promoted to category-IV

welder till Group-'D' selection post fell vacant and depending upon vacancy the test was conducted and they were selected and posted with effect from 25-4-1994. The management stated that there are no merits in the case and claim of petitioner to place the workmen in E.P. Grade-'D' Scale from 25-11-92 may be dismissed.

6. One witness is examined on behalf of the petitioner and 11 documents are marked. 5 witnesses are examined on behalf of the management and 17 documents are marked.

7. WW.1 is the Area Secretary of the Mines. He supported the case of workmen and the claim of petitioner. Ex. W1 is the Office Order of the respondent appointing the workmen as welder trainees in Category II w.e.f. 29-11-1991. Ex. W2 is the proceedings, dt. 18-7-93 promoting the workmen to Category-IV Welder w.e.f. 29-11-1992. He also deposed that all the four workmen were posted at Open Cast Mines from the date of their appointment and all of them are discharging their duties in Open Cast Projects and working on Heavy Earth Moving Machine at OPP. Ex. W3 is the settlement, dt. 3-3-1989 between the management and the union. He testified that annexure-III deals with personal working in Open Cast Mines and all those working in Heavy Earth Moving Machine Equipment in Open Cast Projects will start in excavation in Group-'D'. Ex. W4, dt. 22-10-1990 is the proceeding of the respondent appointing 8 welder trainees i.e., Sivakotachari and others in Category-II. Ex. W5, dt. 31-10-1991 is the proceedings promoting those 8 welders to Category-IV. He further deposed that by proceedings, dt. 22-5-1992 Ex. W7 all the above 8 workmen are given E.P. Group-'D' Pay Scale as per the terms of settlement, dated 3-3-1989. He deposed that the workmen in dispute are also entitled for placement in E.P. Group-'D' from the date of their promotion to Category-IV as is done in the case of Sivakotachari and others. In the cross-examination he denied the suggestion that annexure-III in Ex. W3 will not apply to the workmen in dispute. Ex. M1 is a circular, dt. 5-12-1993 is marked through him.

8. MW.1 is the Deputy Personal Manager of the respondent. His evidence is that the welders who are working in Open Cast Mine will work on Heavy Machinery and they should possess I.T.I. Certificate and NCTVT in welder trade. The process of selection of welders into Category I, II and IV, and the process of the selection in E.P. Group-'D' deposed by him. He also deposed that the welder trainee of Category II cannot be promoted to E.P. Group-'D' directly and after getting into Category IV they will become trades men and then eligible for E.P. Group-'D'. In the Chief Examination itself he testified that Mr. Sivakotachari and 7 others were promoted as E.P. Welder Group 'D' as there was an urgent requirement in E.P. Welders in Open Cast Mine. He has also deposed that they are promoted from Category to Category IV and then to E.P. Group-'D' Welder but without any test.

In the cross-examination he admitted that the workmen in dispute were posted to Open Cast Mine in November, 1990 after they are recruited as Welder Trainee and he do not know the nature of their jobs

and he has no knowledge about the exact vacant position of the welders in the respondent company during the years 1992 to 1996 and he do not know how many welders are working. He admitted that the rules of company applicable to all workmen equally. He admits that Sivakotachari and 7 others were promoted as E.P. Welders Grade-'D' by an Office Order, dt. 22-4-1992 and they are given promotion with retrospect effect i.e., from 11-9-1991 etc. He also admitted that no documents it filed to show that they worked on Heavy Earth Moving Machine and Open Cast Mine and also no document is filed to prove that there was an urgency to recruit welders into Group-'D' when Sivakotachari and others are posted in E.P. Grade-'D'. He admitted the contents of Ex. W7 which shows that Sivakotachari and 7 others were promoted as E.P. Welder Grade-'D' on completion of one year trainee and welder trainee in accordance with para 1 of annexure-III of settlement, dt. 3-3-1989 which is Ex. W3.

9. MW2 working as Divisional Engineer with the respondent deposed about the process of selection of a person as Trainees, Welder Trainee and Promotion to Category-IV and E.P. Grade and he also testified about the appointment and promotion of Sivakotachari and 7 others and also of the four workmen in the dispute. MW3 is a Deputy Personnel Manager and his evidence is incomplete. MW4 is a Senior Personnel Manager and he repeated the case of respondent MW5 is a Senior or Divisional Engineer. Through him M14 is filed showing the vacancy position of Welders in the Company.

10. Heard arguments.

11. The main issue involved in this dispute is whether the four workmen in dispute are eligible and entitled for placement as E.P. Grade-'D' Welders from 29-11-1992.

12. The admitted facts are :

- Appointment of 4 workmen as welder trainees in Category-II w.e.f. 29-11-1991. Ex. W1 is the proceedings of the respondent. They were on probation for 3 months. Ex. W1 also discloses that after one year as Trainee in Category-II they will be considered for promotion as Category-IV; as Tradesmen subject to satisfactory assessment report.
- Promotion of 4 workmen as Welders in Category-IV with effect from 29-11-1992 i.e., after one years successful and satisfactory work in Category-II. Ex. W2 is the promotional Order.
- The Settlement, dt. 3-3-1989 and the annexure-I and III of the settlement. The settlement is Ex. W3.
- The appointment of Sivakotachari and 7 others as Welder Trainees in Category-II with effect from 1-10-1990 through Ex. W4.

their promotion to Category-IV with effect from different dates and immediately as E.P. Welder Group-'D' as per Ex. W7.

- The refusal of respondent to promote the 4 workmen into E.P. Grade-'D' w.e.f. 29-11-92.
- The qualification, the apprentice, the training and appointment as Welder Trainee, promotion as Tradesman into Category-IV of Sivakotachari and 7 others and the workmen is identical. The only difference is they have entered into service one year prior to the 4 workmen and being seniors they are given promotion earlier and as juniors the workmen are seeking the same benefits.
- Sti Sivakotachari and 7 others are promoted as E.P. Welders in Group-'D' as per para I of the memorandum of settlement, Ex. W3, dt. 3-3-1989 (Open Cast Project) i.e., Annexure-III. Whereas for the 4 workmen are not considered for the benefit of para I of the settlement Ex. W3.
- No test is conducted to Sivakotachari and 7 others whereas the test and interview is held for 4 workmen along with other Welder working in different Mines.

13. PROVED FACTS:

The evidence on record reveal the following;

(1) The 4 workmen are working in Open Cast Mines from the date of their initial appointment and worked as Welder Trainee in Category-II and also Welder in Category-IV. WW1 deposed about it. There is no cross-examination on this point by the management. Further MW1 in the cross-examination confirmed that the 4 workmen in dispute were posted to Open Cast Mines in the month of November, 1990 i.e. their first entry into service with respondent. MW2 deposed that the 4 workmen are appointed as MCTVT Trainees on 29-11-1990 MW4 Senior Personnel Manager at Manuguru admitted in the cross-examination that to his remembrance the 2 out of 4 workmen are working in O.C.I, Workshop and the other two are working in O.C.II Workshop from the beginning. MW5 deposed that they are working in O.C.P., MW2 and MW4 stated that they have to verify the documents to give definite date of working of 4 workmen in the Open Cast Mines, but their evidence is that they are working in O.C.P. from the beginning. The respondent did not produce any relevant record to show the actual date of working of 4 workmen in O.C.P. We have the unchallenged testimony of WW1 and supportive evidence of MW1, MW2, MW4 and MW5 about 4 workmen working in Open Cast Projects from the beginning. However the best evidence would be through the records available with respondent. The management did not produce those relevant records though they are supposed to be with them. Necessarily an adverse inference has to be drawn against the respondent for not placing those records.

But I have other documents to peruse to satisfy myself on this point. In column 3 of Ex. W1 the present place of work as on the date of their appoint-

ment as Welder Trainee in Category-II is noted as P.K-O-C.II and O.C.I. W/S and in Column 4, they are posted to work at the same place : O.C.F. an abbreviation for Open Cast Project. In Ex. W-2 in Cunia 2 the place of work is shown as Open Cast-I and II Projects. In Ex. W11 the promotion order to E.P. Grade-'D' the place of posting is shown as O.C-II. Therefore Ex. W1, Ex. W2 and Ex. W11 clearly establish that the workmen are working in Open Cast Project continuously prior to 1991. The evidence on record reveal that they are working in O.C.P., from November, 1990.

(2) In Column 3 & 4 of Ex. W4 Office Order appointing Sri Sivakotachari and 7 others as Trainee Welders shown that they are working in P K-O.C. II prior to 22-10-1990 and posted to work at the same workspot. Ex. W5 discloses that when they are working in O.C. II as Trainee Welders they are promoted as Welder in Category-IV in the year, 1991. Ex. W7 reveals that Sivakotachari and 7 others who are working as Welder Trainees Category II are promoted as Welder Trainees Category-II are promoted 11-9-1991 etc.

Close perusal of Ex. W7 reveal that those 8 workmen who are appointed as Trainee Welders with effect from 1-10-1990. Under Ex. W4 they are given promotion to Category-IV and later as E.P. Welder Grade-'D' with effect from 11-9-1991 under Ex. W7. It means these 8 workmen are promoted to E.P. Grade-'D' even before they have completed one year as Trainee in Category-II. The method adopted by respondent in case of these 8 workmen is totally inconsistent with the office orders of the respondent. The oral evidence of MW1, MW2, MW4 and MW5 also reveals that definite procedure to be adopted in promotion as Welders in E.P. Grade-'D'. Strict scrutiny of the record reveal that the said procedure is not followed in the case of these workmen.

Further these workmen are given retrospective promotions. The date of order of their promotion is 22-4-1992. But the date effect of their promotion is 11-9-1991. The explanation given by the Management witnesses is that there are clear vacancies when these workmen are promoted and there is an urgent work to be extracted as E.P. Grade-'D' Welder. Hence these 8 workmen are promoted on 22-4-1992. If the urgency has arisen in April, 1992 there is no meaning in giving them promotion from September, 1991. It is nothing but absurd. Further Ex. W7 is completely silent with regard to the availability of vacancies of urgency of work. When the promotional proceedings are silent about the two reasons put forth by the respondent, their plea is to be treated as without substance.

MW5 deposed that there are vacancies in E.P. Welder Grade-'D' in September, 1991 and April, 1992 and Ex. M14 is vacancy position. Ex. M14 is prepared on 25-10-1997 and filed in the Tribunal on 12-11-1997. This document is not filed originally. The basic for preparing this document is still unknown. The original records are not produced to prove the vacancy position. The author of this document is not examined as witness. Further the vacancy position as on 30-9-1991 is 10. If so how 8

Welder Trainees of Category-II are promoted as E.P. Grade-'D' Welders with effect from 11-9-1991. It is still a question to be answered. Hence Ex. M14 will not help the respondent to justify their action for promoting 8 workmen within one year from Welder Trainee Category II to E.P. Welder Grade-'D'. The evidence of MW5 reveals that there also vacancies in E.P. Grade-'D' by April, 1992. The 4 workmen have completed their one year Welder Trainee in Category-II in November, 1992 by working in Open Cast Mines. Yet their case is not considered by the respondent on some reasons or other. Therefore it is proved beyond doubt that the respondent has adopted one procedure for promoting Sivakotachari and 7 others and refused to adopt the same in the case of 4 workmen who are also placed in similar circumstance.

14. ELIGIBILITY OF 4 WORKMEN FOR PROMOTION

- (a) Ex. W1 disclose that they are appointed as Welder (Trainee) in Category II with effect from 29-11-1991. This fact is supported by WW1 as well as MW1 to MW5.
- (b) Ex. W2 discloses that they are promoted as Welders in Category-IV with effect from 29-11-1992. This fact is also proved through oral evidence of WW1, MW1 to MW5.
- (c) Ex. W1, Ex. W2, Ex. W11 and the evidence of WW1, MW1, MW2, MW4 and MW5 clearly established that the workmen are working in Open Cast Project from the beginning.
- (d) Annexure-III of the settlement, dt. 3-3-89 which is Ex. W3 is as follows :

For personnel working in Open Cast Mines :

Para 1. Tradesmen working in Heavy Earth Moving Machine Equipment in Open Cast Mines will Start in Excavation Group-D.

- (e) Following the above condition, Sivakotachari and 7 others are promoted in E.P. Group-'D'.
- (f) Sivakotachari and 7 others possess the same qualification such as the 4 workmen but one year seniors to workmen in dispute and they have also been appointed as Welder Trainee Category-II and later promoted to E.P. Group-'D' within one year.
- (g) Cadre Scheme for tradesmen as per annexure-I of Ex. W3 is not followed for Sivakotachari and 7 others as they working in O.C.P., in H.E.M.M : The same fact is clear from their Promotional Order as para-I of annexure-III is forward.
- (h) The 4 workmen who are also working in Open Cast Project in H.E.M.M., are not given benefit of annexure-III of Ex. W3 but treated under annexure-I which is for general category and not for the personnel working in Open Cast Projects.

(i) MW1 has clearly stated that those who are trained as Heavy Earth Moving Machines in Open Cast Mines will be promoted to Group-'D' and he further deposed that who ever is posted to Open Cast Mines they will be working on H.E.M.M. The respondent has not produced any document to show that the 4 workmen have not worked on H.E.M.M., and Sivakotachari and 7 others along have worked on H.E.M.M.

(j) The 4 workmen are promoted to category-IV with effect from 29-1-1992, therefore Ex. M4 which is issued later on 16-12-92 has no bar for promoting the workmen to E.P. Group-'D'. As per Ex. M4 test is to be conducted. This condition if accepted is applicable to those who have not been promoted to category-IV by 16-12-1992. Though the proceedings Ex. W2 is issued on 18-7-1993 the effect of promotion is from 29-11-1992. In case of Sivakotachari and others the effect of promotion are also earlier than the orders of promotion.

I am unable to understand why this procedure is adopted by the respondent. When there are vacancies and eligible employees are available, promotion are to be normally effected from the date of promotion order, which should not be delayed at executive level. In the respondent company the promotions are not considered in time and the proceedings are issued very late, however giving effect of promotion from earlier date. I am afraid whether the said procedure can be adopted in any service and useful to the employee. If this method is adopted the management is expected to mention the reasons for retrospective promotions in the promotional order itself.

For all the foregoing reasons, I am of the opinion that the 4 workmen are eligible for promotion to E.P. Welder Group-'D' from any subsequent date of their promotion into Category-IV as Tradesman from Trainee :

15. ENSTALMENT :

What is the date of entitlement ?

As per para 1 of Annexure-II of Ex. W-3 the 4 workmen are entitled to claim their promotion in E.P. Group-'D'. MW5 deposed that there are vacancies in September, 1991 and also by April, 1992. The September vacancies are filled by Sivakotachari and 7 others. There is no evidence that some workmen are promoted in between before April, 1992. The workmen became eligible for promotion in November, 1992 having promoted to category-IV. Hence the case of workmen for promotion should have been considered immediately after promoting them to Category-IV. Ex. W6 reveals that the petitioner has taken up the case of workmen in 14-7-1993 for promotion to E.P. Group-'D'. Detailed representation is made in Ex. W-6. While so on 18-7-1993 Ex. W-8 the respondent rejected the request stating that annexure-I is applicable to the workmen ignoring the conditions of annexure-III of Ex. W3. In Ex. W8 it is not stated that there are no vacancies in E.P. Group 'D'.

So the plea now taken that there are no vacancies is taken later and is not supported with any document or worthy of oral evidence.

I already held that 4 workmen are eligible for promotion as E.P. Welder Group-'D' after they are promoted as Welder in Category-IV w.e.f. 29-11-1992.

Para I of annexure-III of the settlement, dated 3-3-1989 clearly says that the tradesman working on Heavy Earth Moving Machine in Open Cast Projects are eligible for consideration for promotion to E.P. Grade-'D'. The evidence reveal that those who are promoted to Category-IV are tradesman and those who are working in Category-II are trainees. Hence immediately on completion of one year as Welder Trainee the workman is entitled for promotion to Category-IV as Tradesman and then only they can be considered for promotion on E.P. Welder Group-'D'. In this case Ex. M1 discloses about the vacancy position of E.P. Welder Group-'D' in O.C.M., as on 5-10-1993. In response to Ex. M1 the workmen applied for promotion to E.P. Grade-'D'.

Strictly following the contents of para I of annexure-III of Ex. W3, I am of the opinion that the workmen are entitled for promotion as E.P. Welder-'D' in Open Cast Mines with effect from 5-10-1993 as there are clear vacancies by then and they have put up 11 months experience as Tradesman in Category-IV and working on Heavy Earth Moving Machine in Open Cast Projects. They must get preference over others who are selected through Ex. M10. If there are any senior Tradesman above the 4 workmen in Category-IV working in Open Cast Mines and are also concerned under promotional order dated 19-3-1994 they are also entitled for their promotion with effect from 5-10-1993 but strictly as per seniority, eligibility. All the tradesman working in Category-IV and above in Open Cast Mines must be considered for promotion to E.P. Group 'D' in Open Cast Mines as per the terms of settlement, dt. 3-3-1989 i.e., Ex. W3. When there are clear vacancies and after they are considered and when no such tradersman is available others are to be considered on cadre scheme annexure-I of Ex. W3.

Before I part with this decision, I would like to add few words : The appointments, promotions and postings in the respondent company appears to be more on conveniences than in accordance with the rules-regulations-circulars and settlements. This is one case where I noticed that two different procedures are adopted to the workman of similar qualification at two different periods, one benefitting 8 workmen and the other denying the justifiable claim of 4 workmen. Industry must grow at the same time workmen must receive their due share. Industrial peace is the need of the hour. It is not wise to kill the goose that lays the golden eggs. Therefore the industry must survive. But if the persons responsible for the growth of the goose, is made to starve it would be difficult to produce even ordinary eggs leave along golden eggs : Therefore the highest authorities of Sinterent Collieries are expected to take stock of the situation with all necessary measures for the growth of their Coal Mines by concentrating on their production, by attending and showing all the genuin

problems of the workmen by applying the rule equal pay-equality in all appointments-promotions-postings and at the same time not compromosing with the Industrial discipline : It is only a piece of advise and not an adverse comment. I hope the prestigious coal mine will have industrial peace in futture :

In the result I hold that the action of the respondent in not placing the four workmen in dispute in Category E.P. Welder Grade-'D' is not justified.

The four workmen are entitled for E.P. Welder Grade-'D' Pay Scales from 5-10-1993.

Accordingly award is passed.

Typed to dictation, corrected by me and given under my hand and the Seal of this Tribunal on this the 30th day of April, 1998.

M.E.N. PATRUDU, Chairman.

APPENDIX OF EVIDENCE WITNESSES EXAMINED

For Petitioner/Workmen.

WW. 1-Sri Ravinder Rao.

For Respondent/Management.

MW. 1-Sri K. V. Subba Rao

MW. 2-Sri P. Kumar

MW. 3-Sri K.S.V. Ranga Prasadha Rao

MW. 4-Sri M. Ram Mohan Rao

MW. 5-Sri O. Trinadh Rao.

DOCUMENTS MARKED

For Petitioner/Workmen :

Ex. W1—27-12-1991—X.C. of Office Order No. PD|MNG|2(b)|3820.

Ex. W2—18-07-1993—X.C. of Office Order No. PD|MNG|2(b)|1344.

Ex. W3—03-03-1989—X.C. of Memorandum of Settlement.

Ex. W4—22-10-1990—X.C. of Office Order No. PD|MGR|2(b)|2847.

Ex. W5—31-10-1991—X.C. of Office Order No. PD|PGR|2(f)|2(f-1)|2808.

Ex. W6—14-07-1993—Representation of petitioner to Chief General Manager, Manuguru.

Ex. W7—22-04-1992—X.C. of Office Order No. PD|MNG|2(b)|804.

Ex. W8—18-07-1993—Proceedings No. PD/MGR/BMS|1318.

Ex. W9—24-07-1993—Representation of petitioner to the Assistant Labour Commissioner (Central), Vijayawada.

Ex. W10—05-10-1993—Failure Report.

Ex. W11—23-04-1994—X.C. of Office Order No. P(PM) 4|4194|EPW IIB|1228.

For Management/Respondent :

Ex. M1—5-10-93—X.C. of Circular No. P(PM) 4|4194|W|3405.

Ex. M2—03-03-89—T.C. of Memorandum of Settlement.

Ex. M3—23-04-1994—T.C. of Office Order No. P(PM) 4|4194|EPW IIB|1228.

Ex. M4—16-12-92—T.C. of Office Order (confidential) No. P(PM) 4|4194|W|2847.

Ex. M5—27-12-1991—T.C. of Office Order No. PD|MNG|2(b)|3820.

Ex. M6—16-12-92—T.C. of Office Order (Confidential) No. P(PM) 4|4194|W|2847.

Ex. M7—20-04-93—E.C. of Office Order No. PD|MNG|2(b)|762.

Ex. M8—07-10-93—T.C. of Office Order (Confidential) No. P(PM) 4|4194|W|3432.

Ex. M9—22-11-93—O.C. of Office Order No. PD|MNG|2(F)|2166.

Ex. M10—19-03-94—X.C. of Office Order No. P(PM) 4|4194|W|II B|805.

Ex. M11—23-04-94—X.C. of Office Order No. P(PM) 4|4194|EPW II B|1228.

Ex. M12—
—T.C. of J.B.C.C.I for E.P. Welders Group-'D'.

Ex. M13—08-08-90—X.C. of Office Order No. CTE|IIC|20|50|2620.

Ex. M14—25-10-97—Vacancy position as on 30-9-91.

Ex. M15—
—Service record of V. Sivakotachari.

Ex. M16—
—Service record of A. Venkateswarlu.

Ex. M17—
—Statement showing the Man Power Status of Welders & E.P. Welders.

नई दिल्ली, 11 जून, 1998

का.आ. 1301 —श्रीद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य नियम, मद्रास के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्विष्ट श्रीद्योगिक विवाद में केन्द्रीय सरकार श्रीद्योगिक अधिकरण मद्रास के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-5-98 को प्राप्त हुआ था।

[सं. एल-22012/15/एफ/93-आईआर (सी-II)]
लौली माओरो, डैस्क अधिकारी

New Delhi, the 11th June, 1998

S.O. 1301.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Govt. Industrial Tribunal, Madras as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of F.C.I.,

Medras and their workman, which was received by the Central Government on 27-5-1998.

[No. L-22012/15/F/93-IR (C-II)]
LOWLI MAO, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU MADRAS

Friday, the 23rd day of January 1998

PRESENT :

THIRU S. ASHOK KUMAR, M.Sc., B.L., Industrial Tribunal.

INDUSTRIAL DISPUTE NO. 47 of 1993

(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the Workmen and the Management of Food Corporation of India, Madras)

BETWEEN

The workmen represented by
The Zonal Secretary,
Food Corporation of India Employees Union,
24/25, Ranganathan Street,
T. Nagar, Madras-17.

AND

The Zonal Manager,
Food Corporation of India,
No. 2, Haddows Road,
Nungambakkam, Madras-6.

REFERENCE :

Order No. L-22012/15/F/93-IR(C.II), Ministry of Labour, dated 13-5-93, Govt. of India, New Delhi.

This dispute coming on for final hearing on Wednesday, the 10th day of December 1997, upon perusing the Claim, Counter statement and all other material papers on record, upon hearing the arguments of Tvl. Row & Reddy, S. Vaidyanathan, Kamakshi Sundaram & K. Indira, Advocates appearing for the petitioner-union and of Thiru R. Sundaram, Advocates appearing for the respondent management, and this dispute having stood over till this day for consideration; this Tribunal made the following.

AWARD

This reference has been made for adjudication of the following issue :

"Whether the action of the management of F.C.I. in imposing wage cut for 16-9-91 in respect of the members of F.C.I. Employees' Union is justified? If not, to what relief they are entitled to?"

2. On service of notices, both the petitioner and the respondent appeared before this Tribunal and filed their claim and counter statement respectively.

3. The main averments found in the claim statement filed by the petitioner are as follows :

The petitioner-union is a majority union on All India Levavi consisting of absent 40,000 employees as its members and represent categories II, III and IV employees of the respondent Management. National Co-ordination Committee of F.C.I. Employees (N.C.C.) consists of the petitioner-union and three other unions. In response to the call given by the N.C.C. for country wide agitation to press the demands such as immediate implementation of memorandum of settlement dated 14-1-89. The members of this union participated in the Dharna on 4-9-1991 and 5-9-1991 and one day strike on 16-9-91. The respondent-management issued orders for deducting three days wages from the salary of the employees who participated in the Dharna and strike. The pay cut was deferred in view of dispute raised by the Zonal N.C.C. before the Regional Labour Commissioner, Madras. Since the office bearers were held up at Delhi, Key could not attend the conciliation proceedings and hence the proceedings were closed. As a result the management ordered imposition of pay cut for three days from the salary for April 1992. The petitioner union by letter dated 3-4-1992 to the Regional Labour Commissioner once again requested for its intervention. In the other zones of F.C.I. no pay cut was imposed for Dharna period. In the discussion held on 18-5-1992 as the management agreed not to recover from the salary till a decision is taken in respect of other unions who went on strike/dharna and the petitioner-union withdrew the dispute. In contravention of the said agreement the respondent ordered pay cut to the employees who participated in the strike on 16-9-1991. During August-September 1990 all the staff except the petitioner-union at Coimbatore went on strike for about a month protesting against the disciplinary proceedings initiated against some of their members for their alleged involvement in a theft case in a godown at Peelamedu. About 76 employees were arrested for non-bailable offences in the criminal case filed by the management : The management did not impose any wage cut even for the period spent in jail. On 19-7-1991, members of the F.C.I. Class IV Employees Union went on strike in Tamil Nadu and Karnataka. But the strike period was regularised as eligible leave and the salary for the day was paid. Members of F.C.I. SC/ST Employees' Welfare Association went on undeclared strike for about two months from 2-12-91 and started relay fast during the first week of February 1992. No pay cut was imposed for the period of their agitation. Two groups of F.C.I. SC/ST Welfare Association conducted indefinite fast in front of the F.C.I. Head Quarters at Delhi from 5-8-92. The agitation was called off on 11-8-1992 and the participants returned to Madras only on 21-8-1992. But they were paid salary treating the entire period of their agitation. Two groups of F.C.I. SC/ST stances, the respondent-management has not imposed any wage cut. On the other hand the management has taken discriminatory stand in respect of those who participated in the strike on 16-9-1991 for a common cause. Such discriminatory act of the respondent amounts to unfair labour practice. The strike was

justified and the management was not correct in imposing the wage cut for the strike on 16-9-1991 on the principle of 'No work-No pay'. Before imposing the wage cut the management did not even hear the concerned workers. Hence the petitioner prays to direct the respondent to release the withheld pay to the employees concerned and award costs.

4. The main averments found in the counter statement filed by the respondent are as follows :

Because of the continued absence of the representatives of the N.C.C. in the conciliation meetings fixed on 17-12-91, 9-1-92, and 17-1-92, for joint discussion over the recovery of the wages of the staff of the salary, the Assistant Labour Commissioner, Madras closed the dispute. The allegation of the petitioner-union that the management shows discrimination in the matter of imposition of pay cut is denied. Agreeing with the contention of the petitioner-union that no pay cut was imposed for participation in dharna in other zones of F.C.I. the management of the South Zone reconsidered its earlier decision and deferred the pay cut proposed for the period of dharana on 4-9-91 and 5-9-91 and decided to apply the principles of no work no pay only for the strike on 16-9-91 in accordance with the instructions of the head quarters of the F.C.I. During July-August 1990 Category IV employees working at Coimbatore Depot were on agitation protesting against the charges made against some of the watch and ward staff for their suspected involvement in a theft case at Peelamedu dept. The agitation and consequent arrest of 76 employees was resolved on a representation made by the other unions to the management for intervention and the release of the arrested employees. As a decision was taken for the withdrawal of the cases against the employees concerned the salary was paid to them. The Judicial Magistrate VI, Coimbatore had disposed of the criminal case No. 393/90 and 478/90 on 5-1-93, acquitting all the 76 accused employees. During July 1991, the strike proposed by the F.C.I. Class IV employees union was averted due to the intervention by the Regional Labour Commissioner (Central), Madras who had invited the parties for discussions at 11 a.m. on 19-7-91, and the agitation was also suspended by them. However, due to communication gap, the Class IV employees union members at Karnataka Region struck work on 19-7-91 and the Regional management of Karnataka imposed the pay cut on such of those Class IV employees who had participated in the strike on 19-7-91. However, on a representations made to the Zonal Manager, a decision was taken by the Zonal Manager to treat the strike period as eligible leave. The Joint Action Council of SC/ST Employees Welfare Association commenced Dharna before Zonal Office from 21-12-91 and subsequently commenced relay fast from 21-2-92. Pay cut was imposed on those employees in Zonal office belonging to Joint Action Council of SC/ST Employees Welfare Association for their participation in the relay fast for the days of their participation. The Head quarters of F.C.I. called the office bearers of F.C.I. SC/ST Employees Welfare Association (vadivel Group) Regd. No. 48/78 who had conducted indefinite fast in front of F.C.I. Head Quarters at Delhi from 5-8-92 for a discussion in the meeting fixed on 14-9-92. After holding discussion with the management at Head quarters the agitation was called off by the F.C.I. SC/ST Employees Welfare Association. The allegation that the management has taken an entirely different and discriminatory stand in the matter of imposition of pay cut is denied. The claim petition and prayer are untenable, unsustainable and not maintainable and liable to be dismissed.

5. One witness was examined, on behalf of the petitioner-union and Ex. W-1 to W-16 have been marked. On behalf of the respondent-management no witness was examined and Exs. M-1 to M-8 were marked by consent.

6. The Point for our consideration is : Whether the wage cut for the employees who participated in the strike on 16-9-91 by the respondent management is justified If not, to what relief the petitioners are entitled to ?

7. The Point : There is no dispute that the members of the petitioner-union participated in the dharna on 4-9-91 and 5-9-91 and also in the strike held on 16-9-91. The contention of the petitioner-union is that the respondent management has not imposed wage cut in respect of agitation

conducted by other unions whereas wage cut has been imposed for one day for the strike conducted by the member of the union and thus there is a discrimination. The contention of the respondent-management is that the petitioner union conceded its order of wage cut on 16-9-91 and no discrimination has been shown towards petitioner-union in the matter of imposing wage cut on the basis of no-work no pay.

8. To press a certain demands and implement the earlier settlement the petitioner-union has given a call for dharna on 4-9-91 and 5-9-91, and strike on 16-9-91 as admitted by both the parties. The dharna and strike has been completed by the members of the petitioner-union. When the respondent-management wanted to deduct the wage for three days i.e. 4-9-91, 5-9-91, and 16-9-91, the petitioner-union objected the same by letter dated 3-4-92 marked as Ex. W-13. On 23-7-92 by a letter Ex. W-6 the petitioner-union has complained about the pay cut to the employees who participated in the strike on 16-9-91. The Conciliation before the Regional Labour Commissioner has set tailure report Exs. W-12. It is pertinent to note that by the letter dated 9-4-92 which is marked as Exs. M-7 the petitioner-union itself has conceded for pay cut only for the day i.e. for 16-9-91 the date of strike sponsored by the N.C.C. Earlier pay cut for three days i.e. Dharna on 4-9-91, 5-9-91 and strike on 16-9-91 was proposed by the Zonal Manager of the South Zone of the F.C.I. But in the representation of the N.C.C. dated 9-4-92 it has been as follows : "The Dharna/strike programmed during Spetember 1991 was attended to by a majority section of employees and unfortunately waiver of imposition of pay-cut for the strike that took place on 16-9-91, has not been agreed by the FCI Ors. and in the H. Qrs. as well as in other zones, throughout India, wage cut has been imposed uniformly for the strike held on 16-9-91, from the pay of employees who participated in the day-long strike on 16-9-91. We ascertained from the H. Qrs. as well as from other zones that pay-cut has been made for one day only viz., for the strike on 16-9-91. It is learnt that in the South Zone alone, pay-cut is proposed for three days|two days, viz., for Dharna as well for strike, which procedure is not in line with what has been carried out throughout India and the H. Ors. as well. Hence we request you to kindly cause to consider imposition of pay-cut only for one day only, i.e. for 16-9-91, the date of strike sponsored by the N.C.C. and not to impose pay-cut for three days, as proposed by the I. R. Division. Nore-over, before imposing pay-cut, we would like you to recollect that we have already raised an Industrial Dispute before the Regional Labour Commissioner and as per the laid down set of rules when an issue is pending before any forums of justice, no precipitative action taken neither by the workmen nor by the management. Hence, we request you once again to kindly cause to issue appropriate direction, in the event of failure of the conciliation proceedings, before the Labour forum, to impose only one day pay-cut only for participation in the strike on 16-9-91. "As per the above letter dated 9-4-92, marked as Ex. M.7, the petitioner itself has conceded for a wage cut for one day on 16-9-91. After the petitioner itself conceding for wage cut for one day on 16-9-91, it is not fair on the part of the petitioner-union to raise a dispute on the ground of discrimination when there is actually no discrimination. WW-1 has alleged about only one instance of discrimination with regard to strike for 13 days by the members of the SC/ST Association. But the petitioner-union has not produced any document to prove the discrimination by the management with regard to the above incident or any other incident as alleged in the claim statement. As regards the incident that took place at Coimbatore wherein 76 employees were said to have been arrested and remanded to custody, the case itself has been withdrawn by the respondent-management and all the employees who were implicated in the said theft case have been acquitted and therefore necessarily the period of imprisonment has been treated as duty. Similarly with regard to the strike proposed by the FCI Class IV Employees Union, the proposed strike was averted at the last minute by discussion before the Regional Labour Commissioner (Central) and the agitation itself was suspended and due to communication gap some employees have participated in the strike for one day on 19-7-91. Therefore, the Zonal Officer has treated the strike period as eligible leave. For the dharna before the Zonal office on 21-12-91 and relay fast by the SC/ST Employees Welfare Association pay cut has been imposed on those employees who participated in relay fast

for the days of participation. Thus it could be seen that with regard to the incident at Coimbatore, the case against the employees has been withdrawn and hence their period of absence (remanded in judicial custody) has been treated as duty and they have been paid salary. In the case of strike by the Class IV Employees Union, the strike itself has been withdrawn and due to communication gap, some employees have gone on strike for only one day and the same has been treated as eligible leave. In the case of SC/ST Employees welfare Association wage cut has been imposed for the days of participation of employees. The petitioner-union has not produced any document to show that discriminative action has been taken in the case of employees who were placed similarly as in the present case. In this case petitioner-union members have gone for dharma for two days on 4-9-91 and 5-9-91 and they went on strike on 16-9-91. By the letter dated 9-4-92, they have agreed for a wage cut of one day i.e. 16-9-91. The respondent-management has imposed wage cut for one day on the basis of no work-no pay.

9. In 1978 Labour I. 47, it has been held as follows :—

"I am of the opinion that the wages, as in the words of Lord Denning, are the payment for services rendered. I am inclined to think that it is not so much a question whether the contract is divisible or entire but of reciprocal promises as the consideration, that is to say, the employer provides the employment and pays the remuneration and the employee performs the work during the period he is supposed to do the work. Therefore, the right of the employees to get the remuneration depends upon the performance of his work during the period of employment. If there is any failure of that consideration then taking a strict view of the matter the employer is entitled to refuse any payment at all. But, as has been noticed in "The Contract of Employment" by M. R. Freedland, referred to herein before, very often policy considerations, enter and deduction on pro rata basis is made to avoid undue hardship in the employer-employee relationship. It is true that the definition of the Payment of Wages Act is not very relevant but the wages under the Shops and Establishments Act, which is applicable to the instant case, and the deduction of which wage is made an offence under S.14 of the Shops and Establishments Act brings in the definition provided by the Payment of Wages Act and that definition in express terms mentions as remunerations that would have been payable if the terms of employment were fulfilled and one of the main terms of employment is undoubtedly in the instant case that the employee would work for a specified period of work during the working hours. Therefore, if the employee does not work for a specified period of work then the remuneration would not be payable."

That the petition-union members did not do work on 16-9-91 is admitted by the petitioner-union. There is no dispute that the wage cut for one day i.e. on 16-9-91 has been imposed throughout the country where the employees went on strike. The petitioner-union itself has conceded such a wage cut for one day i.e. 16-9-91 in Exs. M.7 letter dated 9-4-92 sent by the petitioner-union. In the above circumstances, I hold that the wage cut imposed by the respondent-management on the members of the petitioner-union who participated in the strike on 16-9-91 is justified.

In the result, the claim petition filed by the petitioner is dismissed. No costs.

Dated, this the 23rd day of January 1998.

THIRU S. ASHOK KUMAR, Industrial Tribunal

WITNESSES EXAMINED

For Petitioner-union :

W.W. 1—Th. Krishnaparamathma.
For respondent-management—None.

DOCUMENTS MARKED

For Petitioner-union :

Ex. W-1/14-1-89—Settlement under Sec. 18(1) of I.D. Act, 1947 (xerox copy).

W-2/18-7-91—Notice for direct action (xerox copy).

W-3/12-11-91—Letter from respondent to Asst. Labour Commissioner regarding deferment of pay cut (xerox copy).

W-4/18-5-92—Minutes of discussion before the Asst. Labour Comissioner (xerox copy).

W-5/6-7-92—Telex from Zonal Office to Regional Office to impose pay cut for one day (xerox copy).

W-6/23-7-92—Letter from petitioner to Regional Labour Commissioner regarding pay cut (xerox copy).

W-7/24-7-92—Letter from Asst. Labour Commissioner to respondent to defer proposed recovery of wages (xerox copy).

W-8/28-7-92—Minutes of discussion (Xerox copy).

W-9/5-8-92—Petitioner's written comments (xerox copy).

W-10/28-8-92—Respondent's reply (xerox copy).

W-11/26-10-92—Petitioner's rejoinder (xerox copy).

W-12/8-1-93—Conciliation failure report (xerox copy).

W-12/3-4-92—Letter from petitioner to Regional Labour Commissioner requesting for intervention (xerox copy).

W-10/9-10-91—Interim agreement between Management & workmen (xerox copy).

W-15/23-7-92—Circular regarding payment of Productivity Linked Incentive (xerox copy).

W-16/18-5-92—Circular regarding calculation of Pension (xerox copy).

For Respondent-management :

Ex. M. 1/31-7-91—Letter from respondent's HQs. containing instructions to be taken on the notice for direct action given by NCC (xerox copy).

M-2/26-8-91—Zonal office circular (xerox copy).

M-3/26-9-91—Letter from NCC to Regional Labour Commissioner, Madras (xerox copy).

M-4/23-10-91—Letter from Convener, NCC to the Zonal Manager, FCI (xerox copy).

M-5/29-10-91—Telex message to the Regional Managers of South Zone regarding deferment of pay cut (xerox copy).

M-6/13-1-92—Respondent's HO's letter to the Zonal Manager (West) with copy of Zonal Manager (south) regarding treatment of period of strike (xerox copy).

M-7/19-4-92—Letter from Convener NCC (South) to the Deputy Zonal Manager Madras (xerox copy).

M-8/7-7-92—Letter of the Deputy Manager (IR) to the Deputy Manager (Bill) regarding pay cut (xerox copy).

Sd/- S. A.
I.T.

Head Ministerial Officer, Industrial Tribunal

नई दिल्ली, 11 जून, 1998

का.आ. 1302.—प्रोलेटिक विचार प्रधिनियम, 1947 (1947 का 14) की धारा 17 के प्रनुसरण में, केन्द्रीय सरकार भारतीय जाति निगम विवेचनम के प्रबन्धतंत्र के संबद्ध नियोजकों और उसके कर्मकारों के बीच, प्रनुबन्ध में निविष्ट प्रोलेटिक विचार में केन्द्रीय सरकार प्रोलेटिक प्रधिकरण पलककड़ के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-6-98 को प्राप्त हुआ था।

[सं. एस-22012/154/95 पार्ट II]

लौली मास्ट्री, ईस्ट अधिकारी

New Delhi, the 11th June, 1998

S.O. 1302.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Palakkad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of F.C.I., Trivandrum and their workman, which was received by the Central Government on 2-6-1998.

[No. L-22012|154|95-IR(C-II)]
LOWLI MAO, Desk Officer

ANNEXURE

IN THE COURT OF THE INDUSTRIAL TRIBUNAL, PALAKKAD

Saturday the 23rd May, 1998

PRESENT :

Shri B. Ranjit Kumar, Industrial Tribunal.
Industrial Dispute No. 46/95(C)

BETWEEN

1. The Zonal Manager,
Food Corporation of India,
Zonal Office,
Madras-600006.
2. The Sr. Regional Manager,
Food Corporation of India,
Trivandrum-695003.
3. Ministry of Food,
New Delhi.
(By Adv. K. N. Vijayaraghavan)

AND

The Zonal Secretary,
Food Corporation of India,
SC & ST Employees Welfare Association,
Food Corporation of India,
Zonal Office,
Madras-600006.
(By Adv. C. D. Ramalingam)

AWARD

The Government of India, Ministry of Labour as per order No. L-22012|154|95-I.R. (C-II) dated 10-10-95 and Corrigendum notification No. L-22012|(154)|95-I.R. (C-II) dated 21-11-95 referred the following issues for adjudication :

“Whether the action of the management of FCI in terminating the services of A. Murugan and six others (List enclosed) is legal and justified? If not, what the benefits, the workmen entitled?”

2. As per the list enclosed along with the reference order, the workmen concerned in this dispute are 1. A. Murugan, 2. C. Krishnankutty,

3. K. Udayakanthan, 4. V. Sundaram, 5. M. Samudeen, 6. V. Koya and 7. Tojo Joseph. The union has filed a claim statement dated 28-3-96 and rejoinder dated 21-7-96 claiming that the seven workmen concerned in this dispute are entitled to be absorbed/regularised as class IV employees in Food Corporauon of India. The above demand is entirely different from the issue referred for adjudication. One of the workmen concerned has been examined before this Tribunal as WW1. He has stated that at any point of time the services of these workmen were not terminated or there was non-payment of wages since the date of their joining the services. According to his evidence, these seven workmen have been working for the management either directly or through contractors all along. Therefore, admittedly there was no termination of service of these workmen and hence the adjudication of such an issue does not arise at all.

3. However, it is submitted by the learned counsel for the union that the union had already approached the Central Government for the amendment of the reference order and the Government by Ext. W14 letter dated 4-11-97 informed that all the issues including backwages, regularisation etc. have been provided under the reference order. From the reference order, Ext. W14 letter dated 4-11-97 and Ext. W16 tailure report dated 2-3-95 it appears that the Central Government was under the impression that the real issue to be adjudicated was regarding termination of services and if an award is passed in favour of the workmen, they will be entitled to all the consequential benefits including backwages and regularisation. It also appears that this confusion has arisen due to the fact that the union in its Ext. W2 letter dated 22-11-94 addressed to the Assistant Labour Commissioner (C), Ernakulam it is mentioned that the services of seven workmen were retrenched and the Assistant Labour Commission (Central) has also mentioned this allegation in Ext. W15 record note of conciliation proceeding and Ext. W16 failure report. In fact there was no retrenchment or termination of services. I am of the opinion that as long as the real issue is not referred for adjudication, this Tribunal is not competent to adjudicate the said issue. In this ontext the learned counsel for the union placed reliance on a decision of the Kerala High Court in Kollam Jilla Hotel and Shop Workers Union (CITU) V. Industrial Tribunal, Kollam and another 1998 LAB I.C. 345 and submitted that the Tribunal is competent to look into the pleadings and find out the exact nature of dispute instead of refusing to answer the reference on merits. There can be no quarrel over the proposition that in the case of improperly worded reference order the Tribunal is competent to find out the exact nature of dispute from the pleadings of the parties and adjudicate that dispute as held by the Kerala High Court. If the real issue was dismissal or retrenchment and the issue referred for adjudication is denial of employment, there is nothing wrong in ascertaining

the real issue by looking into the pleadings and giving an award. As far as the case at hand is concerned the position is entirely different. As already observed hereinabove the issue referred for adjudication is as to the termination of services, but the real issue is regularisation or absorption of the workmen in the posts of class IV employees. If this Tribunal adjudicate the real issue and pass in award that will definitely amount to enlarging the scope of reference or going beyond the terms of reference which is not permissible. (See : Village Paper (P) Ltd. V/s. State of H.P. 1993(I) LLJ 99). In the circumstance, I am of the view that the decision of the Kerala High Court in Kollam Jilla shop workers unions' case cannot be made applicable in the present case.

4. In the light of the aforesaid discussion, I hold that the reference order is defective as the real issue has not been referred for adjudication and an award is passed accordingly. However, it is clarified that this award shall not stand in the way of raising fresh dispute by the union or issuing fresh order or amended order suo motu by the Central Government for the adjudication of real issue as to the absorption or regularisation of the concerned workmen in the post of class IV employees.

Dated this the 23rd day of May, 1998.

B. RANJIT KUMAR, Industrial Tribunal

APPENDIX

Witnesses examined on the side of Management.
Nil.

Witnesses examined on the side of Union.
WW1 — Sri Murugan.

Documents marked on the side of Management.

Ext. M1 — Byelaws of Palakkad Food Corporation of India Labour Contract Co-operative Society No. P. 943.

Documents marked on the side of Union.

Ext. W1 — Copy of letter dated 25-10-94 from Union to the Assistant Labour Commissioner (C).

Ext. W2 — Copy of letter dated 22-11-1994 from Union to the Assistant Labour Commissioner (C).

Ext. W3 — Employment Card of A. Murugan.

Ex. W4 — Employment Card of Udayakanthan.

Ex. W5 — Employment Card of Sainudeen. M.

Ext. W6 — Employment Card of Koya. U.

Ext. W7 — Employment Card of Sundaran. V.

Ext. W8 — Employment Certificate dated 23-6-73 issued to V. Sundaran.

Ext. W9 — Employment & Conduct certificate dated 29-4-77 issued to A. Murugan.

Ex. W10 — Staff Regulations, 1971 Death-cum-Retirement Gratuity Regulations, 1967.

Ext. W11 — Circular dated 29-10-96.

Ext. W12 — Notification dated 4-2-1976.

Ext. W13 — Letter dt. 20-3-89 from the management to the District Employment Officer.

Ext. W14 — Letter dt. 4-11-97 from Government of India, Ministry of Labour to union.

Ext. W15 — Copy of record note of conciliation proceedings dt. 31-1-95.

Ext. W16 — Failure of conciliation report dt. 2-3-1995.

नई दिल्ली, 9 जून, 1998

का.आ. 1303.—रम्भारी राज्य बीमा निगम अधिनियम, 1948 (1948 का 34) की धारा 2 के उपखंड (19-क) के खंड (ख) द्वारा प्रदत्त प्रक्रियों का प्रयोग करते हुए, केन्द्रीय सरकार एवं द्वारा अखरोट का छिलका उतारने को कथित अधिनियम के उद्देश्यों के लिये मौसमी कारबानों की विनिर्माण प्रक्रिया के रूप में विनिर्दिष्ट करती है।

[सं. एस-38014/8/96-एस एस-I]

जय प्रकाश शुक्ला, भवर सचिव

New Delhi, the 9th June, 1998

S.O. 1303.—In exercise of the powers conferred by clause(b) of sub-section (19-A) of section 2 of the Employees' State Insurance Corporation Act, 1948 (34 of 1948), the Central Government hereby specifies decertification of ~~Jnnt~~ as the manufacturing process of a seasonal ~~factory~~ for the purposes of the said Act.

[No. S-38014/8/96-SS. I.]

J. P. SHUKLA, Under Secy.

नई दिल्ली, 15 जून, 1998

का.आ. 1304.—केन्द्रीय सरकार फो यह समाधान हो जाने पर कि सोकहित में ऐसा करना अपेक्षित था, अर्थोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खंड (ह) के उपखंड (6) के उपबन्धों के प्रनुसार में भारत सरकार के श्रम मंत्रालय की अधिसूचना संघ्या का.आ. 217 दिनांक 5 जनवरी, 1998 द्वारा ताम्बा खनन उद्योग, को उक्त अधिनियम के प्रयोजनों के लिये 5 जनवरी, 1998 से छह मास की कालावधि के लिये लोक उपयोगी सेवा घोषित किया था;

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालावधि को छह मास की और कालावधि के लिये बढ़ाया जाना अपेक्षित है;

अतः अब, ग्रौषोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खंड (५) के उपखंड (६) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिये 5 जुलाई, 1998 से छह मास की और कालावधि के लिये लोक उपयोगी सेवा घोषित करती है।

[फा.सं. एस-11017/11/97-प्राईंगार० (पी.एस.०)]

एच.सी. गुप्ता, अवर सचिव

New Delhi, the 15th June, 1998

S.O. 1304.—Whereas the Central Government having been satisfied that the public interest so required had, in pursuance of the provisions of sub-clause (vi) of the clause (n) of section 2 of the Industrial Dispute Act, 1947 (14 of 1947), declared by the Notification of the Government of India in the Ministry of Labour S.O. No. 217 dated 5th January, 1998 the Copper Mining Industry to be a public utility service for the purpose of the said Act, for a period of six months from the 5th January, 1998;

And whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months;

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947, the Central Government hereby declares the said industry to be a public utility service for the purposes of the said Act for a period of six months from the 5th July, 1998.

[F. No. S-11017/11/97-IR(PL)]

H. C. GUPTA, Under Secy.

नई दिल्ली, 15 जून, 1998

का.प्रा. 11017—केन्द्रीय सरकार को यह समाधान हो जाने पर फि लोकहित में ऐसा करना अपेक्षित था, ग्रौषोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खंड (५) के उपखंड (६) के उपनिषदों के अनुसरण में भारत सरकार के श्रम मंत्रालय की

अधिसूचना संख्या का.प्रा. 3250 दिनांक 16 दिसम्बर, 1997 द्वारा सीमेंट उद्योग को उक्त अधिनियम के प्रयोजनों के लिये 18 दिसम्बर, 1997 से छः मास की कालावधि के लिये लोक उपयोगी सेवा घोषित किया था

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालावधि को छः मास की और कालावधि के लिये बढ़ाया जाना अपेक्षित है;

अतः अब, ग्रौषोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खंड (५) के उपखंड (६) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिये 18 जून, 1998 से छः मास की और कालावधि के लिये लोक उपयोगी सेवा घोषित करती है।

[फा.सं. एस-11017/12/97-प्राईंगार०. (पी.एस.०)]

एच.सी. गुप्ता, अवर सचिव

New Delhi, the 15th June, 1998

S.O. 1305.—Whereas the Central Government having been satisfied that the public interest so required had, in pursuance of the provisions of sub-clause (vi) of the clause (n) of section 2 of the Industrial Dispute Act, 1947 (14 of 1947), declared by the Notification of the Government of India in the Ministry of Labour S.O. No. 3250 dated 16th December, 1997 the services in the Cement Industry to be a public utility service for the purpose of the said Act, for a period of six months from the 18th December, 1997;

And whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months.

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947, the Central Government hereby declares the said industry to be a public utility service for the purposes of the said Act for a period of six months from the 18th June, 1998.

[No. S-11017/12/97-IR (PL)]

H. C. GUPTA, Under Secy.